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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 544

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, APPELLANT,

vs.

THE TAX COMMISSION OF THE STATE OF WASHINGTON ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED OCTOBER 25, 1935.

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IN SUPERIOR COURT OF THURSTON COUNTY

No. 15282

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a Corporation, Plaintiff,

vs.

THE TAX COMMISSION OF THE STATE OF WASHINGTON and T. S. HEDGES and T. M. JENNER, as Members of the Tax Commission of the State of Washington, Defendants

AMENDED COMPLAINT—Filed May 28, 1934

Comes now the plaintiff, The Pacific Telephone and Telegraph Company, and files this, its amended complaint herein, and alleges:

I

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of California; that it has complied with all the laws of the State of Washington relating to foreign corporations, has paid its annual license fee last due to the State of Washington, and is duly authorized to do business therein.

II

That at all times hereinafter mentioned the defendants T. S. Hedges and T. M. Jenner have been and now are members of the Tax Commission of the State of Washington, a continuing board, composed of three members, of which only said two have been appointed and qualified; that said defendants are residents and citizens of Thurston County, Washington.

[fol. 4]

III

That during all of the times herein mentioned plaintiff has owned and operated, and now owns and operates, a telephone and telegraph system, and has been and is now engaged in operating and conducting a public telephone and telegraph system in the State of Washington and in the

States of California, Oregon and a part of Idaho, furnishing to the public telephone exchange service and both intrastate and interstate telephone toll service and telegraph service; that it had, long prior to 1933, duly filed with the Postmaster General of the United States its written acceptance of the restrictions and obligations required by the Act of Congress of July 24, 1866 (14 Stat. 221). That the said plaintiff is subject to the Acts of Congress regulating interstate commerce and to Chapter 117, Laws of Washington of 1911, known as the "Public Service Commission Law," and the amendments thereto.

IV

That the Interstate Commerce Commission, in pursuance of its statutory powers, has prescribed the form of accounts to be kept by telephone companies, subject to the Act to Regulate Commerce, as amended (41 Stat. L. 474), and in particular in accordance with Section 20 of said act as amended; that plaintiff is one of the telephone companies in the United States subject to said act and is required by law to keep its accounts in the form prescribed by the Interstate Commerce Commission; that the Department of Public Works of the State of Washington, by order No. 5251, dated October 31, 1921, has adopted and has prescribed for all telephone companies subject to its jurisdiction the same form of accounts as that adopted and prescribed at that time by the Interstate Commerce Commission.

[fol. 5]

V

That Chapter 191 of the Laws of Washington of 1933, being an act entitled

"An Act relating to taxation; imposing taxes upon the privilege of engaging in business activities and providing for the ascertainment, assessment, collection and distribution thereof; providing for the administration and enforcement of this act; providing penalties; making appropriations; and declaring that this act shall take effect immediately."

provides, in Section 2(2), page 871, that "from and after the first day of August, 1933, and until the thirty-first day of July, 1935, there is hereby levied and there shall be col-

lected from every person (and corporation) an annual tax or excise for the privilege of engaging in business activities" in the State of Washington, measured by a percentage "gross income" of certain business activities described in said Section 2, and by said Section 2(2)(e), page 873, a tax of three per cent of said gross income is imposed on telephone and telegraph companies, including the plaintiff, for the privilege of engaging in such business activities in this state. By Section 5, page 879, of the said Laws of 1933, there is excepted from taxable gross income so much as is received from the United States, the State of Washington, "or from business which the State of Washington is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States." Defendants construe said act as not applying to the gross income from interstate business, but pretend that the same applies to the gross income from plaintiff's intrastate business, and that plaintiff owes and must pay said three per cent of said gross income for the privilege of doing intrastate business in this state.

[fol. 6] VI

That the definition of "gross income," as set forth in Section 1 of said Chapter 191 of the Laws of 1933, is as follows:

"(6) The term 'gross income' means the value proceeding or accruing from the sale of tangible property, real or personal, or service or both and all receipts, actually received by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees or other emoluments however designated and without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest or discount paid or any other expenses whatsoever and without any deduction on account of losses: Provided, The term 'gross income' shall not include any payments received on accounts or notes outstanding at the time this act goes into effect."

That said statute is so vague and indefinite in its definition of "gross income" as to render it impossible for plaintiff thereunder to compute, with reasonable certainty, the amount of the tax, if any, owing by it thereunder.

VII

That plaintiff's telephone and telegraph business in the State of Washington is conducted efficiently and economically; that plaintiff's net earnings derived from its intrastate telephone and telegraph business in thre State of Washington, stated in rate per cent annual return upon the fair value of plaintiff's property used and useful in furnishing said service, and exclusively devoted to the rendition thereof, was (during the first six months of 1933 and up to the effective date of said Chapter 191) not in excess of 1.75 per cent, and that the payment of any tax as required by said act is arbitrary, unreasonable, oppressive, and confiscatory of plaintiff's property, in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 7]

VIII

That the plaintiff constructed and equipped its telephone and telegraph business in this state many years prior to the enactment of said Chapter 191 of the Laws of 1933, and has expended therefor more than $60,000,000 to provide adequate facilities for both interstate and intrastate telephone and telegraph service.

IX

That plaintiff is subject to Chapter 117 of the Laws of 1911 of the State of Washington, known as the "Public Service Commission Law," and thereby and by the Constitution of the State of Washington, Article XII, Sections 13, 14, 15 and 19, there is imposed on the plaintiff an obligation to devote its properties to the service of the people in this state in the furnishing of telephone and telegraph service, from which it cannot withdraw while continuing to carry on its interstate business.

X

That said tax of three per cent on the gross income, imposed by said Chapter 191 of the Laws of 1933, is not a property tax nor in lieu of a property tax, but is an excise tax imposed solely for the privilege of doing intrastate business, and plaintiff cannot escape said tax by abandon-

ing said business while continuing in its interstate business as aforesaid.

XI

That plaintiff has paid all taxes of any and every kind levied by or for the State of Washington, the County of King, a municipal corporation of the State of Washington, [fol. 8] or any other municipal subdivisions of the State of Washington, against all of its property of any and every kind to date; that on March 15, 1933, the plaintiff paid to the respective treasurers of the various counties in the State of Washington in which plaintiff owns property the sum of $115,681.34 on account of real property taxes owing to the State of Washington and all municipal subdivisions thereof; that likewise on March 15, 1933, the plaintiff paid to the respective treasurers of the various counties in the State of Washington in which plaintiff owns personal property the sum of $582,309.17, being the first half of the 1932 taxes levied against all of plaintiff's personal property located in the State of Washington; that the remaining one-half of said taxes for the year 1932 can be paid without penalty on or before November 30, 1933.

XII

That plaintiff's interstate and intrastate business is inseparable, commingled and mutually dependent; that both classes of business are done by plaintiff over the same telephone and telegraph lines, through the same exchanges, operated by the same employes and with the same facilities, and that it is not possible, practically or economically, or at all, to conduct separately intrastate and interstate business by different lines, through different exchanges or by means of different instrumentalities or employes; that plaintiff's gross operating revenue in this state for the year 1932 from the conduct of its entire business, both intrastate and interstate, was a large sum of money, aggregating $11,295,788.86; that of said sum a very large portion was derived from interstate telephone and telegraph business originating in or coming to the State of Washington.

[fol. 9]

XIII

That if plaintiff could and should abandon its intrastate telephone and telegraph business, the entire burden of

maintaining and operating its intrastate system of telephone and telegraph service, equipped to handle both classes of business, would fall entirely on interstate business and would necessitate an increase of rates greater than the same could bear as a practical matter or at all, and would result in the destruction of an essential instrument of interstate commerce and of the value of plaintiff's property in an amount of many millions of dollars. That the tax imposed by said Chapter 191, Laws of 1933, on the pretext of a tax or fee for the privilege of doing intrastate business in the State of Washington, is in reality a tax or burden upon interstate commerce and upon the gross revenues received by plaintiff therefrom and is a tax upon plaintiff's business done and upon income earned in other states and upon property located outside the State of Washington, and is in violation of the commerce clause of the Constitution of the United States, being Article I, Section 8, of said Constitution, and of the due process clause of the Fourteenth Amendment to the Constitution of the United States, and of the Acts of Congress regulating interstate commerce.

XIV

Section 6 of said Chapter 191, Laws of 1933, provides that said annual tax of three per cent shall be payable in monthly instalments on or before the 15th day of the month next succeeding the month in which the tax accrued; that the taxpayer, on or before the 15th day of the month, shall make out and file, on forms prescribed by the Tax Commis-
[fol. 10] sion, a return showing his estimate of the amount of the tax for the preceding month and accompany the return with payment of the amount so estimated. Section 7 provides that on or before fifteen days after the end of the year each taxpayer shall make a return for the entire year, verified by oath, and pay any balance after crediting monthly payments theretofore made. Section 8 makes provision for correcting errors, and Section 9 requires that records of gross income be kept for five years, during which they shall be subject to examination by the said Tax Commission. Section 10 provides that if a taxpayer fails to make the required return, the Tax Commission shall obtain the facts on which to base the assessment and examine the taxpayer's books and take evidence, and thereupon assess

the tax with a penalty of ten per cent for failure to make return and a further penalty of one per cent per month of the tax for each month after the same was due, and shall notify the taxpayer of the amount of the tax and added penalties, which shall be paid within ten days after date of notice. Section 13 provides that no injunction shall be granted to enjoin the collection of any tax or penalty, except upon the ground that the same was in violation of the Constitution of the United States or of the State of Washington. Section 14 provides that after payment of the tax, the taxpayer may apply to the Tax Commission for a hearing and correction and refund of the amount and for appeal to the superior court, and thence to the supreme court. No provision is made by said sections or otherwise by the act for refund of taxes paid if said act should be held unconstitutional as to plaintiff or any taxpayer, or for any reason that no tax is payable by plaintiff under said act. Section 16 provides that if any tax or penalty be not paid within fifteen days after due, the Commission shall [fol. 11] issue a warrant directed to the sheriff, commanding him to levy upon and sell the real or personal property of the taxpayer found within his county, or so much as may be necessary for the payment of the amount due, together with a penalty of one per cent for each thirty days after date of the warrant, plus the cost of executing the same, and said warrant is returnable within sixty days after receipt by the sheriff. The sheriff, within three days, shall file with the clerk of the superior court of his county, and the clerk shall enter in the judgment docket, the amount of the tax and other details, and thereupon the amount so entered shall be a lien upon all real and personal property of the taxpayer in the same manner as a judgment, and the sheriff shall proceed to collect said amount by sale and execution, as provided by law. The proceeds of such sale shall be credited on the amount due under the warrant, and when the full amount, plus interest, penalties and costs, is received, the judgment docket shall be satisfied, and if not paid in full, the deficiency shall be and remain a judgment against the taxpayer and collected in the same manner. Section 17 provides that any person may be enjoined by suit in the superior court from engaging or continuing in any business for which a privilege tax is required until the same has been paid and until he has complied with the pro-

visions of the act. Section 23 provides that it shall be unlawful for any person to fail or refuse to obtain a license, or to fail or refuse to make any return provided for in the act, and any person or corporation violating any of the provisions of said section shall be guilty of a gross misdemeanor and punishable in the manner provided by law, to-wit, by fine and imprisonment. Section 28 appropriates [fol. 12] the sum of $10,000 for the purpose of making refund of taxes erroneously paid as provided by the act. The aforesaid provisions of said statute, and each of them, intended to administer the same and to enforce collection of said tax, are, as applied to the plaintiff, contrary to the commerce clause of the Constitution of the United States, to-wit, Article I, Section 8 thereof, and the due process clause of the Constitution of the United States, and are null and void.

XV

Plaintiff alleges that it has refused to make any return and that it refuses to pay any tax, and has in all particulars failed and refused to comply with any of the provisions of said Chapter 191, Laws of 1933.

XVI

That the defendants, and each of them, threaten to and will, unless restrained, invoke the penal provisions of Sections 10, 15, 17 and 23 of said act, and threaten to and will, unless restrained, issue a warrant directed to the sheriff, commanding him to levy upon and sell the real and personal property of the plaintiff within any county in the state, and thereby the title to plaintiff's property will be clouded by the lien of said pretended tax and its property will be sold for taxes, and plaintiff will be deprived of the use thereof and its business will be destroyed, to its great and irreparable injury, and plaintiff will be prosecuted as for a gross misdemeanor and fined and punished in the manner provided by law.

XVII

Plaintiff has no adequate remedy at law for said wrongs and injuries, for the reason that if it makes said monthly [fol. 13] payments, it will be necessary to bring repeated

actions at law to recover, in which the issues will be the same and the parties will be the same, and there is no provision made by said act or otherwise for the satisfaction of any judgment, interest and costs which plaintiff may obtain; and plaintiff further alleges that it will be put to great expense and inconvenience in making said monthly and annual returns for the reimbursement of which no provision is made, and the same will be a total loss to plaintiff, even if it should recover the amount of the tax so paid pursuant to said act.

Wherefore, plaintiff prays that defendants, and each of them, their agents and employes, be restrained and enjoined from taking any action against the plaintiff, or its employes, for failure to make a return under said act, from making any assessment against plaintiff for said tax or any part thereof, from issuing any warrant directed to the sheriff of any county in this state, commanding him to levy upon and sell any real or personal property of plaintiff within his county and directing him to file said warrant with the clerk of the superior court, or taking any action whatever against plaintiff for the collection of said pretended tax, and from in any manner proceeding against the plaintiff under Section 23 or otherwise for failure or refusal of plaintiff to obtain any license to do business in this state or for failing or refusing to make any return provided for in said act, or for failure or refusal to pay the tax or any part thereof claimed to be due or payable under said act; and that plaintiff have such other and further relief as may be just and equitable in the premises.

McMicken, Ramsey, Rupp & Schweppe, Attorneys for Plaintiff.

[fol. 14] *Duly sworn to by C. E. Mong. Jurat omitted in printing.*

Copy received this 28th day of May, 1934. G. W. Hamilton, R. G. Sharpe, Attys. for Defendants.

[fol. 15] [File endorsement omitted]

IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

ANSWER—Filed July 20, 1934

Come now the defendants and for answer to plaintiff's amended complaint:

I

Admit the allegations of paragraph I thereof.

II

Admit the allegations of paragraph II thereof except that defendants allege that in addition to the two members therein named, Harold H. Henneford is now and for many months last past has been a member of said Tax Commission.

III

Answering paragraph III thereof, defendants deny any knowledge or information sufficient to form a belief as to whether plaintiff has filed with the Postmaster General of the United States its written acceptance of the restrictions and obligations required by the Act of Congress of July 24, 1866 (14 Stat. 221), but otherwise admit the allegations of said paragraph III.

IV

Admit the allegations of paragraph IV and V thereof.

[fol. 16] V

Answering paragraph VI thereof, defendants admit that the definition of "gross income" contained in Section 1, Chapter 191, Laws of 1933, is in the words and figures set forth in said paragraph VI, but deny each and every other allegation, matter and thing contained in said paragraph VI.

VI

Answering paragraph VII thereof, defendants deny any knowledge or information sufficient to form a belief as to

whether or not plaintiff's telephone and telegraph business in the State of Washington is conducted efficiently and as to whether or not such business is conducted economically, or as to what plaintiff's net earnings derived from its intrastate telephone and telegraph business in the State of Washington were for the first six months of 1933 and up to the effective date of said Chapter 191, Laws of 1933, either in rate per cent annual return upon the fair value of plaintiff's property used and useful in furnishing said service, or otherwise, and denies each and every other allegation, matter and thing contained in said paragraph VII.

VII

Answering paragraph VIII thereof, defendants deny any knowledge or information sufficient to form a belief as to the amount which plaintiff has expended in the construction and equipment of its telephone and telegraph business in this state, or as to whether the facilities furnished by said plaintiff have been adequate either for interstate telephone and telegraph service or for intrastate telephone and telegraph service.

VIII

Answering paragraph IX thereof, defendants admit that plaintiff is subject to Chapter 117 of the Laws of Wash- [fol. 17] ington of 1911, but deny each and every other allegation, matter and thing therein contained.

IX

Answering paragraph X thereof, defendants admit that the said tax of three per cent on the gross income, imposed by said Chapter 191 Laws of 1933, is not a property tax nor in lieu of a property tax, but deny each and every allegation, matter and thing therein contained.

X

Answering paragraph XI thereof, defendants deny any knowledge or information sufficient to form a belief as to the allegations of said paragraph, and particularly deny any knowledge or information sufficient to form a belief as to the amount of taxes paid by plaintiff on either its real or personal property in the State of Washington for the

year 1932, or as to whether plaintiff has or has not paid all taxes levied against its said property, or as to how much, if any, of such taxes still remain unpaid.

XI

Answering paragraph XII thereof, defendants admit that plaintiff's operating revenue in this state for the year 1932 from the conduct of its entire business, both intrastate and interstate, was a large sum of money, to-wit, not less than $11,295,788.86, and that a portion of said sum was derived from interstate telephone and telegraph business originating in or coming to the State of Washington, but deny each and every other allegation, matter and thing therein contained.

XII

Answering paragraph XIII thereof, defendants deny each and every allegation, matter and thing therein contained.

[fol. 18]

XIII

Answering paragraph XIV thereof, defendants admit that the provisions of Chapter 191, Laws of Washington of 1933, therein referred to, are substantially as alleged in said paragraph, but deny each and every other allegation, matter and thing therein contained.

XIV

Admit the allegations of paragraph XV thereof.

XV

Answering paragraph XVI thereof, defendants admit that the defendants and each of them threaten to and, unless restrained, will, if plaintiff does not pay its tax, issue warrants directed to one or more of the county sheriffs of the counties in which plaintiff's property is located, or to the duly authorized agent of such tax commission, commanding them to levy upon and sell plaintiff's real and personal property within the state and that sufficient property of plaintiff will be sold under such warrants to pay such tax, but deny each and every other allegation, matter and thing contained in said paragraph XVI.

XVI

Answering paragraph XVII thereof, defendants deny the same and each and every allegation, matter and thing therein contained.

As and for a first affirmative defense to the matters set forth in plaintiff's amended complaint, defendants allege:

That the plaintiff has never applied either to the Department of Public Works of the state of Washington or to any other department of such state for permission to renounce its intrastate business in the state of Washington.

As and for a second affirmative defense to the matters set forth in plaintiff's amended complaint, defendants allege:

[fol. 19] That the plaintiff has never applied to the department of Public Works of the state of Washington for permission to increase any of its rates or tariffs on either its intrastate public telephone exchange service or its intrastate telephone toll service or its intrastate telegraph service in the state of Washington, or any of its other rates or tariffs, on the ground that its operating expenses would be or have been increased by reason of the occupation tax imposed on plaintiff by the provisions of chapter 191, Session Laws of the state of Washington for 1933.

Wherefore, defendants pray that plaintiff take nothing by reason of its amended complaint herein, and that said defendants be allowed to go hence with their costs.

G. W. Hamilton, Attorney General; R. G. Sharpe, Assistant Attorney General, Attorneys for Defendants.

Duly sworn to by T. M. Jenner. Jurat omitted in printing.

[fol. 20] STATE OF WASHINGTON,
County of Thurston, ss:

Margaret Page, being first duly sworn on oath deposes and says that at all the times herein mentioned she was and now is a citizen of the United States and of the State of Washington, over the age of twenty-one years and in nowise interested in the above entitled action and competent to be a witness herein.

That on the 20th day of July, 1934, affiant served the within answer upon the plaintiff therein named by deposit-

ing a true and correct copy of said answer in the U. S. post office at Olympia, Washington, securely wrapped and with first class postage thereon fully prepaid and plainly addressed to:

McMicken, Ramsey, Rupp & Schweppe, Attorneys at Law, 660 Coleman Building, Seattle, Washington,

which said addresses were then and there the attorneys for plaintiff in the above entitled action. That there is regular and daily communication between the City of Olympia, Washington, and the City of Seattle, Washington.

Further affiant saith naught.

Margaret Page.

Subscribed and sworn to before me this 20th day of July, 1934. Jennie M. Tattersall, Notary Public in and for the State of Washington, residing at Olympia.

[fol. 21] [File endorsement omitted]

IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

ORDER GRANTING TEMPORARY INJUNCTION—Filed July 12, 1934

The above entitled matter having come on to be heard before the undersigned judge of the Superior Court of the State of Washington upon motion of the plaintiff for a temporary injunction during the pendency of this action and until the final determination thereof on the merits, enjoining the defendants, as members of the Tax Commission of the State of Washington, from enforcing against the plaintiff the provisions of Chapter 191 of the Laws of 1933 of the State of Washington; both parties appearing by their respective counsel, and this court having heretofore overruled defendants' demurrer to the amended complaint herein, and it appearing to the court that the defendants, as members of the Tax Commission of the State of Washington, threaten immediately to enforce the provisions of said act against the plaintiff during the pendency of this

action and prior to the final determination thereof on the merits, by causing to be seized the property of the plaintiff on account of the tax purporting to be imposed by said Chapter 191, and that an emergency exists, and the court [fol. 22] being fully advised in the premises,

Now, Therefore, it is hereby ordered that the defendants, as members of the Tax Commission of the State of Washington, and each of them, and the said Tax Commission of the State of Washington be and they hereby are enjoined and restrained, during the pendency of this action and until the final determination thereof upon the merits, from enforcing against the plaintiff any of the provisions of Chapter 191 of the Laws of 1933 of the State of Washington.

It is further ordered that this temporary injunction shall become effective upon plaintiff filing in this court and cause a bond, conditioned as provided by law, in the sum of $10,000.00.

Done in open court this 12 day of July, 1934.

(Signed) D. F. Wright, Judge.

[fol. 23] [File endorsement omitted]

IN SUPERIOR COURT OF THURSTON COUNTY

No. 15282

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a Corporation, Plaintiff,

vs.

THE TAX COMMISSION OF THE STATE OF WASHINGTON, and T. S. Hedges and T. M. Jenner, as members of the Tax Commission of the State of Washington, Defendants

DECREE—Filed March 11, 1935

The above entitled matter came on duly and regularly for trial on January 9, 1935, before the undersigned, one of the judges of the above entitled court, the plaintiff appearing by its counsel, McMicken, Ramsey, Rupp & Schweppe, and the defendants appearing by their counsel, G. W. Hamilton, Attorney General of the State of Washington,

and R. G. Sharpe, Assistant Attorney General. The trail proceeded with the introduction of testimony on behalf of the plaintiff and on behalf of the defendants until the close thereof; and the court having heard the arguments of counsel, and being duly advised in the premises; and it appearing to the court that the tax imposed upon plaintiff above named by Chapter 191, Laws of 1933 of the Laws of the State of Washington, is in violation of the commerce clause, viz., Article I, Section 8, of the Constitution of the United States and of the Fourteenth Amendment to the Constitution of the United States;

Now, therefore, it is by the court ordered, adjudged and decreed that the defendants above named, and each of them, and their agents and employes, be and they hereby are permanently restrained and enjoined from enforcing against the plaintiff or its employes the provisions of Chapter 191 of the Laws of the State of Washington of 1933, being an act entitled:

[fol. 24] "An Act relating to taxation; imposing taxes upon the privilege of engaging in business activities and providing for the ascertainment, assessment, collection and distribution thereof; providing for the administration and enforcement of this act; providing penalties; making appropriations; and declaring that this act shall take effect immediately."

And said defendants, and each of them, their agents and employes, are hereby further permanently restrained and enjoined from making any assessment against the plaintiff for the pretended tax, or any part thereof, provided to be paid under said act hereinabove referred to, from issuing any warrant directed to the sheriff of any county in the State of Washington, commanding him to levy upon or sell any real or personal property of the plaintiff within his county, and directing him to file said warrant with the clerk of the superior court, and the said defendants, and each of them, their agents and employes, are further permanently restrained and enjoined from taking any action whatever against the plaintiff for the collection of the pretended tax in said act hereinabove referred to sought to be levied, and, further, from in any manner proceeding against the plaintiff under Section 23 of said act, or otherwise, for the failure or refusal of the plaintiff to obtain

any license to do business in this state, or for failing or refusing to make any return provided for in said act, or for failure or refusal to pay the pretended tax, or any part thereof, claimed to be due or payable under said act. To all of which each defendant excepts, which exceptions and each of them are hereby allowed.

Done in open court this 11th day of March, 1935.

D. F. Wright, Judge.

Presented by: McMicken, Ramsey, Rupp & Schweppe, by Alfred J. Schweppe.

[fol. 25] MEMORANDUM RE NOTICE OF APPEAL

Be it remembered that at the time the foregoing decree was made and entered, the defendants and each of them gave notice in open court that the defendants and each of them appealed from said decree and the whole thereof to the supreme court of the State of Washington.

Done in open court this 11th day of March, 1935.

D. F. Wright, Judge.

[fols. 26-30] [File endorsements omitted]

IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

[fol. 31]

Statement of Facts—Filed March 28, 1935

Be it remembered, that the above entitled causes came on regularly for hearing before the Honorable D. F. Wright, one of the judges of the above entitled court, sitting in Department No. 2 thereof, at the Thurston County Court House at Olympia, Washington, at the hour of ten o'clock a. m. on Wednesday, the 9th day of January, A. D., 1935; the parties herein appearing by their respective attorneys as follows:

The plaintiff by Otto B. Rupp and Alfred J. Schweppe of McMicken, Ramsey, Rupp and Schweppe.

The defendants by R. G. Sharpe.

Whereupon, the following proceedings were had and testimony taken, to wit:

Mr. Rupp: If your Honor please, I take it you are sufficiently familiar with the issues involved in this particular litigation, so that no opening statement is necessary. I therefore call Mr. Sheldon.

MR. R. D. SHELDON, being a witness called on behalf of the plaintiffs, after having been first duly sworn, testified as follows:

Direct examination.

By Mr. Rupp:

Q. Mr. Sheldon, you live in Seattle?
A. Yes, sir.
Q. How long have you lived there?
A. Between seven and eight years.
Q. You are the assistant to the general auditor of the Pacific Telephone and Telegraph Company, are you not?
A. I am.
[fol. 32] Q. How long have you been employed by the Pacific Company or by one of what is commonly called the Associated Companies or by the parent company, the American Telephone and Telegraph Company?
A. Approximately twenty-nine years.
Q. In what capacity?
A. First with the Southwestern Bell Telephone Company and its predecessor in the state of Oklahoma, starting in the capacity of manager of one of the small exchanges and transferred to the accounting department in 1907 and holding various positions in the accounting department, ranging from travelling auditor to the position of division auditor at the head of the accounting department in Oklahoma. Transferring from there to the American Telephone and Telegraph Company in 1928 and for three years occupying the position of travelling auditor of that company, followed by three years in the comptroller's department in New York in various capacities in their method section, culminating with the position of supervision and plant disbursement accounting methods. Ten years ago I was transferred to the Southern Telephone Company at Los Angeles as auditor of that company and some two

years later to the position of assistant to the general auditor at San Francisco. Six months later to Seattle where I have since been acting auditor of the companies in Oregon and part of Idaho.

Q. In that portion of the state of Idaho in which the Pacific Telephone Company operates?

A. Yes, sir.

[fol. 33] Q. Northern Idaho and largely adjacent to the territory of which Lewiston, Idaho is the center?

A. Yes, sir.

Q. Now, as assistant to the general auditor and as acting auditor for the Washington, Oregon, Idaho area of the company, you have charge of the books of the Pacific Company in that territory?

A. I do.

Q. As a part of your work, also, you have charge of the books of the Home Telephone and Telegraph Company of Spokane?

A. Yes, sir.

Q. Now, have you prepared from the books of the company a statement showing the amount on the books of the Pacific Telephone and Telegraph Company for plant, equipment and working assets at the end of each year from the year 1922 down to and including the year 1933 and the average for each of those years for plant, equipment and working assets?

A. I have.

Q. Is the document which I now hand you a transcript showing what is on the books of the company for the items which are denominated in the document itself?

A. Yes, sir.

Mr. Rupp: I offer that in evidence.

Mr. Sharpe: No objections.

(Statement of the Pacific Telephone Company of amount on books for plant equipment and working assets total for State of Washington, admitted in evidence and marked plaintiff's exhibit 1.)

[fol. 34] Mr. Rupp:

Q. The exhibit, of course, speaks for itself but it shows the average of the plant, equipment and working assets for the year 1932, which is what?

A. $58,013,344.

Q. And the average for the year 1933, which is how much?

A. $57,993,413.

Q. I noticed a star at — in the first column after the figure 1-1-1933 and that is marked down below as reclassification of accounts. Explain that.

A. From 1913 until the end of 1932 our accounting was performed in accordance with the provisions of the first issue of the uniform system of accounts for telephone companies promulgated by the Interstate Commerce Commission. Effective January 1, 1933, quite numerous revisions were made in the system of accounts and the titles changed to the first revised system of uniform accounts. The adoption of the first revised issue necessitated certain reclassification of issues between accounts and had the effect of bringing into what we term plant accounts certain items formerly carried in assets accounts of the other class to the amount of $84,029.

Mr. Sharpe: Your Honor please, when this document was offered a few minutes ago, I waived objection to it. [fols. 35-47] Upon reflecting, I believe the document is immaterial to the issues in this case, and I therefore wish to withdraw my statement, I didn't object to the statement, if it is possible to do so at this time and move that the document be stricken on the ground it is not material to the issues in this case. I am not objecting to the method of proof or demanding the production of the proof, but I don't believe that the question of what investments the company has in the state of Washington is material to the determination of the validity of the occupational tax as applied to this particular company. I ask that I be permitted at this time to preserve my objection, by motion to strike the document.

The Court: That is what I was going to suggest. It may be admitted with the understanding that you may argue the effect of it at the conclusion.

Mr. Sharpe: Of course, I also object to the testimony of this witness with respect to the matter contained in the exhibit, the question of the investments in the plant equipment and working assets on the same ground, that they are not material.

The Court: It may be understood it goes in over your objection.

[fol. 48] Q. Now, Mr. Sheldon, you are aware of the fact that in the year 1922, in cause number 5344, before the Department of Public Works of the State of Washington, a value was determined by the Department for the Pacific Company in the state of Washington?

A. Yes, sir.

[fol. 49] Q. Have you taken the decision of the Department of Public Works fixing the value of the Pacific Company's property in the state of Washington as of June 30, 1922, and brought that value down by years, by net additions and betterments to the end of the year 1933?

A. I have.

Q. Is the document which I now hand you the document which shows the net additions and betterments made each year from 1922 on?

A. Yes, sir.

Q. And the decision is brought to the end of each year and the average for each of those years?

A. Yes, sir.

Mr. Rupp: I offer those in evidence.

The Court: They may be admitted.

Mr. Sharpe: I object on the same ground, it is immaterial.

[fol. 50] (Decision on rate base in case 5344, brought down to end of and average for each year, 1922-December 31, 1933, inclusive, admitted in evidence and marked plaintiff's exhibit no. 5.)

[fols. 51-53] Q. You are aware, also, of the fact, are you not, that in the year 1915 there was introduced into a rate case then pending before the Public Service Commission of the state of Washington, No. 1810 and 1825, an actual performance appraisal of the property of the company in the state of Washington?

—. ——.

[fols. 54-65] Q. As I understand it, you answered you have brought down that actual performance appraisal by net additions to plant and equipment for each of the years 1915 on.

A. Yes, sir.

Q. The document I hand you shows that compilation, does it?

A. Yes, sir.

Mr. Sharpe: I object to it on the ground it is immaterial.

The Court: It may be admitted.

(Actual performance appraisal as of December 31, 1914, brought down to end of and average for each year 1915-December 31, 1933, inclusive, admitted in evidence and marked plaintiff's exhibit no. 6.)

[fols. 66 & 67] Cross-examination.

By Mr. Sharpe:

Q. Mr. Sheldon, you have testified only to matters relating to the cost of property as shown by the books and shown by the reports after hearing of the Department of Public Works of this state, haven't you? You haven't testified in any way with respect to either the net or gross earnings of the companies, either the Home or Pacific Companies?

A. I have not.

Q. You have not testified as to anything relating to the depreciation of these various properties, operating properties of the Pacific or Home Companies?

A. I have not.

[fol. 68] Mr. R. W. Mastick, being a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct examination.

By Mr. Rupp:

Q. Your initials are R. W.?

A. R. W. Mastick.

Q. You live in Seattle?

A. Yes, sir.

Q. What is your occupation?

A. I am general staff engineer of the Pacific Telephone and Telegraph Company for the state of Washington.

Q. Do your duties also comprehend like matters for the Home Telephone and Telegraph Company of Spokane?

A. Yes, sir, I act in the same capacity for that company.

Q. Will you tell us what your education has been and what your employment has been?

A. I attended the University of California, Berkeley, California and studied there electrical engineering. After leaving college, I was employed by the Pacific Telephone and Telegraph Company in January, 1907.

Q. Well, what have you done for the Pacific Telephone and Telegraph Company since you entered its employ?

A. My first employment with the company was with the engineering department in San Francisco in making toll line location surveys in the state of California, after which I was involved in making plant inventories of the properties of the Pacific Company in California, Nevada and southern Oregon, and on miscellaneous drafting work. That was 1907 and '08. In 1908, I was employed in making [fol. 69] commercial surveys of the territory, to prepare the computations and surveys to serve as a basis of forecast for the plant and to make telephone development studies and, having had experience in that work, I was then put into fundamental plan work, which was a matter of taking the forecasts and actually designing what the Telephone plant should be in the future, to meet the development anticipated in the future. After that, I was engaged in outside plant and design, actual outside plant design. In 1910—that work lasted from 1908 to 1910. In 1910, I became engaged in transmission engineering, which comprehends the electrical design of the apparatus used in speech communication. I was in that from 1910 to 1912.

In 1912, there was instigated in California an investigation of the inductive effect between telephone and power lines. The inductive effect caused noises on the lines. The California Railroad Commission became interested in that and I was appointed by the California Commission as engineer in charge of field research for inductive interference. I was loaned by the company to the Commission for this work. At the same time I carried on work as transmission engineer for the company. I worker there for about three years, and conducted a highly technical survey of the effect of inductive disturbances in telephone lines. We promulgated in the joint committee a set of rules and regulations for lines in parallelism and they were issued as a gen-

eral order by the California Commission and are still in force [fol. 70] and effect. As a result of this work, the California Commission published a large volume on that subject which I edited and compiled for them.

In 1914 I was appointed transmission and protection engineer of the Pacific Company in San Francisco and in that capacity I had charge of the electrical design of all of the telephone plants and equipment of Nevada, California, Idaho, Oregon and Washington. I retained this position until 1923.

In 1923 I was appointed engineer of outside plant design and practice. This position involved not only carrying on the transmission and protection duties, but also gave me charge of the design of outside plant, structurally, including the maintenance for the entire territory of the Pacific Company in the same states. In 1926, I was appointed chief engineer for the Pacific Telephone and Telegraph Company for their operations in the states of Washington, Oregon and Idaho, with headquarters at Seattle. I was chief engineer of the Pacific Company from 1926 to '30, and I had entire charge of plant design of all of the properties in that area.

In 1930, I was appointed special representative of the Pacific Company in that area, reporting to the vice president and general manager. I was involved in studying the problems of management that we have to solve in connection with the operation of the company.

In 1933 I was appointed general staff engineer, which included along with the duties of special representative, the matter of handling all tax matters in the states of Wash- [fol. 71] ington and Idaho and the Home Telephone Company of Spokane.

Q. You are a member of a number of technical associations?

A. I am a member of the American Institute of Electrical Engineers, was a member of the American Railway Association for years and a member of the National Electric Light Association for years.

(Whereupon an adjournment was taken until one-thirty o'clock p. m.)

(Upon reconvening, the following proceedings were had and testimony taken, to wit:)

Mr. Mastick (on stand).

Mr. Rupp:

Q. Now, Mr. Mastick, will you turn to the annual report for the year 1932 and the annual report for the year 1933, of the Pacific Company to the Department of Public Works and tell the Court how much taxes were paid by the Pacific Company in the state of Washington for each of those years?

A. The taxes paid by the Pacific Telephone and Telegraph Company in the state of Washington for the year 1933, paid during the year 1933—1932, pardon me, were $1,510,541.39.

Q. Does the report to the Department show the segregation of those taxes?

A. Yes, sir.

Q. What does it show for taxes on real estate in the state of Washington?

A. A total of $116,997.98 on real property and $1,066,-[fol. 72] 663.48 on the personal property, plus a figure of $193.75 on personal property paid in the city of Waitsburg.

Q. There is a peculiar situation in the city of Waitsburg?

A. Yes, sir.

Q. What is it, briefly?

A. They retained the right, under charter, to levy and collect their own taxes.

Q. That is the only case of its kind in the state of Washington, so far as you know?

A. Yes, sir.

Q. Will you give the comparable figures for 1933 as shown by the reports?

A. 1933, the taxes paid during that year, $1,604,796.14. Of the real property taxes, $116,233.23; personal property taxes, $1,164,618.10, plus the same item reported in 1932 for the city of Waitsburg, $193.75. I say the same item, I mean the same amount is applicable to 1933.

Q. What accounts for the difference between the figures for real and personal property taxes paid in the year 1932 and the total paid by the company relative to Washington operations as shown by the annual reports for each of those years '32 and '33?

A. There are other taxes the company pays besides real

and personal property taxes. They include such taxes as Federal income and franchise and license payments.

Q. What was the amount of Federal income tax?.

A. 1932 was $277,978.60.

[fol. 73] Q. Do you know how that is determined?

A. That is a pro rate of the total amount of Federal income tax paid by the Pacific Company pro rated to the state of Washington on the proportion of the property in the state of Washington to the entire——

Mr. Sharpe: You say relation of property?

A. Plant and equipment.

Mr. Sharpe: You mean the total of the property?

A. The total on the books.

Mr. Sharpe: Its relative cost, then, as appearing on the books?

A. Right.

Mr. Rupp: For certain items of property, plant and equipment.

Mr. Sharpe: Operating equipment?

A. Yes, sir.

Mr. Rupp:

Q. What was the comparable amount for federal income tax for 1933?

A. 1933, the Federal income tax was $263,361.56. That is the Washington portion of the Pacific Company payment.

Q. In both years, there is an amount shown by the report for Federal capital stock tax?

A. Yes, sir.

Q. And that is determined, so far as the state of Washington is concerned, in the same manner that the amount of Federal income tax attributable to the state of Washington is determinable?

A. Yes, sir.

Q. That is equally true of another small item in the year [fol. 74] 1933 of Federal tax amounting to approximately $2500.00?

A. Yes, sir.

Q. Franchises and licenses for the year 1932 is how much?

A. I would have to add this column of figures to get that. It is segregated separately by towns.

Q. I see. Well, if you take the total amount of tax and deduct from it the Federal income tax in the year 1933, $210,336.50; Federal capital stock tax, $24,999.75—989.75; and other Federal taxes of $2,578.04; and the amount of real property taxes of $101,042.01; and personal property taxes of $887,112.10 plus $193.75, paid to the city of Waitsburg, you would have the amount of franchise and license taxes?

A. That is correct.

Q. On an accrual basis?

A. Yes, sir.

Q. Now, then, the actual amount of taxes paid during the year 1933 was $1,604,796.14, of which amount $263,361.56 was Federal income tax, $16,659.83 Federal capital stock tax, other Federal taxes, $2,578.04, real property taxes $116,233.23, personal property taxes $1,164,618.10 plus the Waitsburg tax, $193.75?

A. Yes, sir.

Q. You would have the amount of franchise and license taxes actually paid? It would be the difference between the $1,604,796.14 and the figures of the amounts shown for Federal income, Federal capital stock, other Federal, real property, personal property and Waitsburg?

[fol. 75] A. That is correct.

Q. The figures for 1932, both the amount accrued and the amount actually paid during that year, are in the annual report to the Department?

A. Yes, sir.

[fol. 76] Mr. Sharpe: I object to the offer of evidence of the taxes paid by the company, as not material to the issues [fols. 77 & 78] in this case, and not having a bearing on the validity of this particular tax, the subject of dispute here. So far as the production of the actual receipts in evidence is concerned, the defendants waive the production of the receipts if the Court finds the question of what taxes were paid for these years to be material. I merely object to the proof on the ground it is immaterial.

The Court: The objection may be overruled.

Mr. Rupp:

Q. In the year 1933, did the Pacific Company pay to the state of Washington any taxes under the act here under attack?

A. No.

[fol. 79] Q. Now, then, Mr. Mastick, have you prepared a document showing the gross operating revenues for the Pacific Company for the year 1932, segregated as between intrastate and interstate, the total operating revenues segregated between intra-state and interstate, the net revenues sgregated between intra-state and interstate, the amount of taxs actually paid during that year, also so segregated, and the ratio of the operating income, both intra-state and interstate, relating to the amount on the books for plant, equipment and working assets for the average of the year 1932, and a like relationship between the operating income and the average of the Commission decision brought down, and a like ratio, equally so segregated, as to the actual performance appraisal of the average for the year 1932?

A. Yes, sir, I have.

Q. Is the document which I now hand you the compilation to which you have just referred?

A. It is.

Mr. Rupp: I offer it in evidence.

Mr. Sharpe: I object to it on the ground it is immaterial.

[fol. 80] The Court: It *is* may be admitted.

Mr. Sharpe: Certain parts of it, I object to.

Mr. Rupp: Here is a copy.

(The Pacific Telephone and Telegraph Company, state of Washington, year 1932 operations admitted in evidence and marked plaintiff's exhibit no. 11.)

Mr. Sharpe: I object to the items in the plaintiff's exhibit 11.

The Court: Yes.

Mr. Rupp: We agree your objection can run to each item.

Mr. Sharpe: I don't want it to run to each item.

Mr. Rupp: You are objecting to it.

Mr. Sharpe: I object to the figures shown on line D of plaintiff's exhibit 11.

The Court: What line?

Mr. Sharpe: Line D and line F, and line G, line H, line I and each of the other lines following, J, K, L and M, each on the ground that the same is wholly immaterial to the issues in this case, and to the question raised by the pleadings in this case and I object to each of those lines independently, on the same ground.

The Court: The objection may be overruled with the understanding, of course, you may argue the effect at the close of the case.

[fol. 81] Mr. Rupp:

Q. Have you prepared a like compilation for the year 1933 of the Pacific Telephone and Telegraph Company?

A. Yes, sir.

Q. Does the document I now hand you show the result of your compilation?

A. No, sir. This is 1932.

Q. I gave you the wrong one.

A. Yes, sir, this is the statement I prepared.

Mr. Rupp: I offer that in evidence.

Mr. Sharpe: Which one, '33 this time?

Mr. Rupp: It is exactly like '32.

Mr. Sharpe: I object to this document, plaintiff's exhibit 11.

Mr. Rupp: 12.

Mr. Sharpe: 12, on the same grounds urged against plaintiff's exhibit 11.

Mr. Rupp: All right.

The Court: The objection may be overruled with the same understanding.

(Year 1933 operations, the Pacific Telephone and Telegraph Company—state of Washington admitted in evidence and marked plaintiff's exhibit No. 12.)

[fol. 82] Mr. Rupp:

Q. Now, then, whence were the figures derived as shown on the last four exhibits? Where, for instance, did you get the gross operating revenue for the Pacific Telephone and Telegraph Company for the year 1932?

A. That figure was taken from the annual report to the Department of Public Works, state of Washington.

Q. Whence did you get the amount of interstate gross operating revenue for that year?

A. That was determined from an analysis of the revenue account itself.

Mr. Sharpe: What did he say?

Mr. Rupp: It is determined from an analysis of the revenue account itself.

[fol. 83] Mr. Sharpe: That is not shown by the report?

A. No.

Mr. Rupp:

Q. To accommodate Mr. Sharpe, tell him how you ascertained at $1,123,536.49 was the interstate revenue of the Pacific Company for the year 1932?

A. What was that figure you read?

Q. 1932, $1,123,536.49.

A. Oh, I see. That figure for revenues was obtained from the records of the company, its books of the revenue receipts.

Q. Do the books of the company show the amount of interstate revenue received?

A. No, sir, we had to analyze the revenues accounts by sources to find it.

Q. Explain a little more in detail what you did.

A. Well, to determine—can I speak of this in a general fashion?

Mr. Rupp: Surely.

A. To determine the interstate and intrastate segregation of property, revenues and expenses, you must first understand that whenever any subscriber or any customer of a telephone company places a toll call, we make out a toll ticket for that call, the operator that passes the call makes out a toll ticket. That toll ticket shows, among other things, the originating point and the telephone customer's number and the point of destination of the call. It also shows the time interval, or the amount of time that customer used that toll circuit in his conversation. Those tickets are made out on every toll call and, therefore, we [fol. 84] have an absolute record of every toll message, whether interstate or intrastate. We handle, Your Honor, about, somewhere in the vicinity of five million toll messages a year. We analyzed these toll tickets, all available in the state at the various toll centers where they originated. We analyzed of those total five million tickets, one million, two hundred fifty thousand tickets. I want to show you what a toll ticket looks like. Here is a toll ticket from Olympia, Washington, to Tacoma and an intrastate toll call. It originated at Olympia, telephone number 361, by this gentleman and terminated at Tacoma and the amount

of time used on that circuit was two minutes. There is a similar ticket for an interstate call from Olympia, telephone 374, to Portland, Oregon, time of conversation, two minutes. That time of conversation is determined from when the subscriber reaches the party called. This ticket is put in a calculgraph and stamped on the back. When the conversation ceases and the operator takes down the ticket, it is stamped again and the time is determined from those two stamps. That is how we determined the time used on each conversation for billing purposes. Now we, therefore, knew from analyzing this 1,250,000 toll tickets, the number of messages, the amount of time used, the amount of time use of the property for those messages and, also knew the length of haul for each of those messages within the state. Taking those three factors we added them up to get the "message-mile-minute" use of the property on toll calls. Relating—we knew the "message-mile-min-
[fol. 85] ute" use for interstate business and for intrastate business, because the tickets were first segregated between interstate and intrastate; therefore, we knew the relation for the intrastate business to the total business, and we knew the relation of the intrastate time use of the property to the total time use. That gave us the ratios to apply to the various accounts in these tabulations that have been submitted to the total revenues to get the intrastate amount, to get the interstate, and so forth.

Q. So far as the dollars of revenue derived from interstate toll telegraph and telephone calls which the subscriber pays, as an interstate telephone or telegraph call, that is known and recorded on the books of the company?

A. Yes, sir.

Q. Both actual dollars to add up the amount paid by the subscriber for a telephone message from Olympia to San Francisco, you take as Washington's share of that interstate revenue, the circuit haul between Olympia and Vancouver, do you not?

A. Yes, sir.

Q. Assuming, for the sake of argument, that the circuit mileage between Olympia and Vancouver is one-tenth of the total circuit haul between Olympia and San Francisco, there would be allotted to the state of Washington on the books of the company one-tenth of the amount which that subscriber paid for that call?

A. That is correct, yes, sir.

Q. Now, then, in addition to that, there is in this inter-
[fol. 86] state revenue, not only Washington's proportion on circuit mileage basis of revenue derived from interstate telephone and telegraph calls but the amount received by the company from program supply?

A. Yes, sir.

Q. That is radio service, is it not?

A. Yes, sir.

Q. And that is wholly interstate?

A. Yes, sir.

Q. All expenses are interstate, all property used in connection therewith is interstate and revenue is interstate?

A. Yes, sir.

Q. So, in the figure of one million odd dollars, the amount received by the company for program supply and Washington's proportion on a circuit mileage basis is the interstate revenue basis of the telephone and telegraph revenue?

A. Yes, sir.

Q. The Pacific Company has testimony already before this court that it does both an interstate and intrastate business?

A. Yes, sir.

Q. What can you say as to whether the entire property of that company used or useful in rendering intrastate and interstate business is devoted at different times to the carrying of these two classes of service?

A. The entire property is devoted, at different times, to carrying on both classes of service, and we can have it do
[fol. 87] both classes of service at one and the same time.

Q. Is there any further subdivision of the interstate and intra-state business of the Pacific Company?

A. Yes, sir.

Q. What is that subdivision?

A. That is between local service and toll service.

Q. Define local and toll service.

A. Local is between customers located in the same exchange. Toll is between customers located in different exchanges.

Q. That is to say, local is between two people located within the exchange area of Olympia?

A. Yes, sir.

Q. Roughly, the city limits?

A. Yes, sir.

Q. And it extends sometimes beyond it?

A. Yes, sir.

Q. Toll service is service between Olympia and some other exchange located outside the city of Olympia?

A. That is correct.

Q. Have you prepared a chart showing the use of the telephone plant for a local call and intra-state toll call and an interstate toll call?

A. I have, yes, sir.

Q. Is the chart which I now hand you the chart to which you just referred?

A. Yes, sir, it is.

Mr. Rupp: I offer that in evidence. If Your Honor please.

[fol. 88] Mr. Sharpe: I object to it without it being explained further.

Mr. Rupp: All right, we will explain it.

Q. Now, will you take this chart and show us, first, how a telephone plant is used in a local call?

A. Now, on the right hand side of this diagram, I have shown enclosed in dotted lines an exchange boundary, the multi-office exchange, say, typical of the Seattle exchange in the state of Washington. There are more offices in the Seattle exchange than are shown here. In this particular chart are shown three offices in triangular relation, one being a manual office, the other a dial office and the third a toll office. In the lower left and right hand corners of that exchange I have shown a residence subscriber's telephone located in the residence subscriber's home and the business subscriber's phone located in his office in an office building. A call between the residence subscriber and the business subscriber's office, in the multi office exchange of Seattle is a local call and local use and because both of these subscribers are within the same state, the service is intrastate. Now, the route of such a call, beginning with the residence subscriber's telephone on the left is via the solid red line to the manual central office connecting to the solid green line running to the dial office, connecting again to the solid red line to the subscriber's instrument in the office building. Now, beginning with the residence sub-

scriber's telephone again, the classes of plant used in such a local call are as follows: subscriber's station telephone, [fol. 89] which consists in this case of a desk stand telephone with the bell box and associated apparatus. From that telephone, a pair of inside wires run to the point of exit of the building. Those wires, of course, are carefully put in and fixed to the walls and so forth, and terminated on the outside of the building with a pair of fuses to protect it from accidental electrical shock. From the point of the building exit to the first pole is a drop wire, a pair of insulated wires, to the first pole. That drop wire is connected to a pair in the diagram, a pair of aerial wires carried on crossarms and insulators supported by poles. At the end of that structure, it runs into a pair of conductors in an underground cable in an underground conduit into the central office and terminates on the switchboard. The operator on the left puts up the connection on an interoffice trunk, shown by the green line. There are hundreds of these trunks running from the manual office to the dial office. In the diagram, they are a pair of conductors in an underground cable. At the dial office the connectors work automatically without the aid of an operator and connect to the subscriber's loop running from the dial office to the office building. Again, the wires from the dial office to the subscriber's telephone in the diagram, are a pair of conductors carried in underground cable through the underground conduits, being cross connected in a terminal box in the basement to what we term a riser cable running up to a private branch exchange, which, in this case, is on the third floor, from which the subscriber's telephone is [fol. 90] served. The private branch exchange operator puts up the connection on the riser cable and inside wiring to the subscriber in the office building. That is the route and the property used in a local call.

I might say further, for economic reasons, subscriber's loops may be either wholly in aerial wire, or wholly in aerial cable supported by poles, or wholly in underground cables, in underground conduits, or may be a combination of all three, depending on the conditions which we face in the community. As a rule, the large cables carry a large number of conductors. Subscribers' cables range in size from a cable of a few pairs of conductors to 1818 pairs of conductors, 3,636 wires encased in a lead sheath. Inter-

office trunks, carried in inter-office trunk cables range from a few pairs to say, three or four or five hundred, or six hundred pairs, and the gauges of these conductors run from 19 gauge to 26 gauge B. & S.

Q. Will you take the chart and note the use of the telephone plant for an intrastate toll call?

A. To the left of the multi-office exchange boundary is shown, enclosed within dash-dotted lines a single office exchange. This is another exchange located within the state of Washington, say, for instance, the exchange of Olympia here. As shown in the multi-office exchange, it also shows for the single office exchange at Olympia, the customer's station in his residence, and the manual office switchboard at the Olympia office to which it is connected. The call from this customer to the business customer at Seattle is an [fol. 91] intrastate toll call and the use of the property in that call is intrastate toll use. Now, as before, the route of that call from the customer's station at Olympia is via the solid red line to the local manual central office, where it is connected to the solid yellow line running to the toll office in Seattle, and from the toll office in Seattle, connected again to the same dial office, or the dial office from which the business customer is served, and is connected again to the solid red line to the subscriber's telephone in the office building.

Starting again at the residence customer's station, we have the customer's telephone instrument, inside wiring to the point of exit from the house, the drop wire to the first pole, the conductors in open wire, aerial cable, to the manual local—manual central office where it is cross connected now into an underground dip running into the office. There the operator connects it to the toll line carried in a pair of aerial wires to the point up here at the top of the diagram where it goes into a pair of conductors, carried in underground cable through an underground conduit to the toll office. In the toll office a cross connection is made to a toll switching trunk connected to the local dial office from the toll offices like an inter-office connection in the ordinary manner in an ordinary inter-office call to the dial office. At the dial office, it is connected again to the subscriber's loop running to the subscriber in the business office. Precisely [fol. 92] the same facilities are used in the subscriber's loop for the intrastate call as for the local call in the case

I cited previously. Likewise, the subscriber's station instrument and the subscriber's loop to the central office can be used and is used by the subscriber for a local call that he wants to place from his station to some other friend's station in the city of Olympia. These two portions of property are used in both intrastate toll and local calls.

Now, the toll line—I want to go back a little. The toll line from the local manual central office in Olympia is, in this case, a pair of copper conductors connected to the toll office in the city of Seattle. It may be a phantom circuit derived from two pairs of copper conductors, to get three telephone circuits working simultaneously without interference to each other; or it may be a carrier circuit arrangement of vacuum tubes and apparatus operating at high frequency. It allows us to put on one pair of copper wires, three additional speech channels, all operating independently of each other. We can have three channels of carrier on one pair of wires, three communications going over the three channels, including the conversation over the ordinary telephone wire, without interference. In using a carrier system, it is many times superimposed on an intrastate circuit, say from Seattle to Vancouver, Washington. On that circuit from Seattle to Vancouver, Seattle can be talking to Vancouver and can also be talking to San Francisco over carrier channels, on the same telephone wires. The carrier channel at Vancouver, instead of stopping, goes [fol. 93] on over another pair of wires or carrier channel. Over this pair of wires there can be some party talking to San Francisco on the same pair of wires, while a person in Seattle is talking to Vancouver.

Q. And another to Olympia?

A. Yes, and another to Olympia and another to some place on the same loop, there being a possibility of four telephone conversations over one pair of wires simultaneously, without interference.

Q. How about telegraph?

A. Telegraph business is done over the same wires as telephone. By means of balancing equipment, we derive telegraph service without interfering with the telephone conversation, in much the same way as the carrier circuit, using different frequencies with the telephone than telegraph. On a carrier channel we can put twelve telegraph channels in the space that the speech would take, on three

carrier channels we can have thirty-six telegraph channels, or twenty-four telegraph channels and two telephone channels, or any combination we want. They all work simultaneously over the same wires without interference.

Q. That is to say, if you saw out here, on a pole line, a pair of wires, there could be going over that pair of wires in a certain sense at one and the same time, a telephone conversation between Olympia and Vancouver, another between Olympia and San Francisco, and twelve or eighteen or twenty-four telegraph messages at the same time?

A. That is correct, yes, sir.

[fol. 94] Mr. Sharpe: He hasn't finished it.

Mr. Rupp: No.

Q. Now, will you take the same chart and show the use of the telephone plant in making an interstate toll call, and combining it with, when you get through, with the telephone end of it, the use made for telegraph purposes?

A. Now, to the left of the single office exchange, I have just been discussing for the intrastate call, I show a dash-dotted line, "State line" and to the left of that, a manual office located outside the state.

Mr. Sharpe: You mean one operated by girls instead of automatic?

A. In contra-distinction to the dial.

Mr. Rupp: It wouldn't make any difference for the purpose of this chart.

A. I tried to get all the types. This manual office to the left of this line is, say, the exchange at Astoria, Oregon. As shown in the local and intrastate calls, I show here the customer's station in the customer's residence, the telephone instrument in his station connecting to the central office over the subscriber's loop, thence over the solid blue line, in this case again a toll line similar to the toll line described for the intrastate call. Because it is a long toll call, we have to route it through a repeater station. A repeater station, or repeater, is a combination of vacuum tubes, resistances, and condensors so arranged to amplify the minute sounds to the receiving point at such strength as to give satisfactory loudness and clearness of conversa-
[fol. 95] tion. That toll line is routed from the manual office at Astoria to the toll office in Seattle. There it is cross connected again to the same toll switching trunk to

the dial office and again connected at the dial office to the office building telephone over the subscriber's loop. It is the same subscriber's loop that was used for a local call and for an intrastate toll call. In Seattle any subscriber anywhere in the system uses his telephone instrument and wires connecting it to the nearest central office on either local business, intrastate toll business or interstate toll business. That is jointly used at the will of the subscriber at different times for all three types of business. And the same is true of the subscriber over here. This man, at will, may make a local, intrastate, or interstate toll call over the same facilities.

Now, these toll lines are all supported by a minimum number of pole structures, generally located on private rights of way to keep them off the highways as far as we can get them, and the toll switching trunks from the toll to the dial office are carried in cables. In many instances the toll offices, I might say in most instances, the toll office is located in a single office exchange in the same office building as the subscriber's telephone switchboard. In the multi-office, it is generally in the down town main central office. It can be either a separate line of switchboard apart from the subscriber's switchboard, it can be a section of [fol. 96] the telephone switchboard in line with the subscriber's switchboard, or a position in the subscriber's switchboard itself. And in some cases in the large cities, say Chicago and New York and other points, it might be located in a separate building, but that is very unusual. The usual case in Washington is to find the switchboard in the local central office, and the multi-office, in the down town exchange office building. And in some cases, there are some three units of local switchboard. I mean three separate central offices in one building.

Q. In the city of Olympia, of course, the toll switchboard is in the only building we have in Olympia.

A. Yes, sir.

Q. In Seattle, in the building at Third and Seneca?

A. Third and Seneca.

Q. There are no toll switchboards in any of the other twelve exchange buildings in Seattle?

A. No, although some of the subscriber's switchboards are used for toll.

Q. What would you say, in view of the description you have given, as to whether or not the various parts of the company's property in the state of Washington are used both in interstate and intrastate business at different times and for different purposes?

A. All——

Mr. Sharpe: I object to that as being covered by the previous testimony.

Mr. Rupp: Now, I offer in evidence the chart.

The Court: It may be admitted.

Mr. Sharpe: No objection.

[fol. 97] (Above mentioned chart admitted in evidence and marked plaintiff's exhibit 15.)

Mr. Rupp:

Q. Now, what can you — as to whether or not all these various parts of telephone plant and equipment used by the company in the state of Washington are separable or inseparable, unmingled or commingled, independent or mutually dependent?

Mr. Sharpe: I object to that as not proper expert testimony. It is shown by the testimony of the witnesses and for the Court to determine from the testimony of the witness the fact.

Mr. Rupp: He can say what the fact is.

Mr. Sharpe: If it is a deduction proper to make from the testimony already given, it is not necessary to fortify it by an expert answer calling for a conclusion. That is for the Court to determine from the evidence, not for the witness to determine. Your Honor can't be assisted in arriving at your conclusion by the conclusion of the witness of the fact he has set forth. That is the very question in the case, is whether or not, as far as the plaintiff is concerned, whether or not necessary facilities are commingled so they can't be segregated and that is for the Court to determine, not for this witness to determine.

The Court: He may answer the question.

Mr. Sharpe: Exception.

A. Inseparable, commingled and mutually dependent.

[fol. 98] Q. From what you said, the same outside facilities, the same exchanges, and the same central office equip-

ment installed in the exchange buildings are used in the transmission of messages, whether either interstate or intrastate, and are operated by the same employees, using the same facilities, whether it is interstate or intrastate?

A. Yes, sir.

Q. Suppose an attempt was made to separate the intrastate business from the interstate business, can it be done?

A. It can not.

Mr. Sharpe: I object to that as immaterial, calling for the conclusion of the witness.

The Court: I think the answer may stand.

Mr. Sharpe: Exception.

Mr. Rupp:

Q. Suppose we abandon the intrastate business in the state of Washington, how much of the equipment is used in conducting both classes of business and how much is used for the intrastate business?

Mr. Sharpe: Objection.

The Court: He may answer.

Mr. Rupp:

Q. Taking up first the station customer's loop and station apparatus.

A. In the subscriber's loop, segregation of the property, that is always the red line in this diagram, over 92½% of that property would have to be used if we did solely an interstate business.

[fol. 99] Q. Now, how do you know that is true?

A. Well——

Mr. Sharpe: That is a big one. It will take a long time to answer that question.

Mr. Rupp: It has to be answered and he wants to proceed to answer it. It isn't a matter of guess on our part. It is actual knowledge.

A. The telephone property, from what I have said heretofore, is a very complex and intricate structure. In order to keep track of that property and know what its function is, how it is used and where it is used, and so forth, the company has to keep very elaborate records, in other words, keep records showing the classification, location and

type, and so forth, for every part of their plant and equipment in the various cities and towns and states. I made an inspection of the various records, maps, drawings of this property and, from my experience as a telephone engineer, I was able to determine what part of that property was in exclusive local use, exclusive intrastate use, or exclusive interstate use. Having determined that, the balance of the property was in joint use. I knew the amount of that property in dollars, of the total property carried on the books. I deducted from that amount the amount of property in exclusive use and the result was the amount of property in joint use for the three services.

Q. Have you prepared a statement showing the subscriber's loops and supporting structures, the total cost of those items of property and the amount in dollars of that property which is jointly used?

[fol. 100] A. Yes, I have.

Q. Is the document I now hand you the result of your studies such as you have just described?

A. It is.

Mr. Rupp: I offer that in evidence.

Mr. Sharpe: I object to it on the ground it is immaterial and there is also underlying data from which this document is procured that has not been produced. It is evidently made up from records of the office of the company, to a great extent.

Mr. Rupp: If it is desired it be produced, we will produce it.

Mr. Schweppe: We will let you check it. Will that satisfy you?

Mr. Sharpe: I don't know what it is made up from.

A. The regular operating maps and records of the company, by which it keeps track of its business, our everyday working records.

Mr. Rupp:

Q. That is, that the company has to know, for instance, where a particular piece of underground conduit is?

A. Yes, sir.

Q. It has a map that shows the exact length of it, where the man-holes are, and so forth?

A. Yes, sir. What cables and how many in it, what ducts in use and wires and what is in use, and where and in——

Q. The location of the poles owned by the company and all poles of a joint interest, whether one-half, one-third or one-sixth?

[fol. 101] A. Yes, sir.

Mr. Rupp: If it is necessary, we will produce the records.

Mr. Sharpe: Your Honor will see the defendants are helpless in checking the testimony of the witness. The plaintiff produces a witness undoubtedly qualified as far as his ability is concerned, nevertheless it is impossible for the defendant to check his testimony in regard to the percentage of property he claims is used in all three of these services jointly or the percentage used in interstate only, and so forth, and consequently it would be impossible for us, in justice to my client, to permit this testimony to go in unchallenged without having an opportunity in some way to check the underlying data from which it was prepared.

The Court: They tendered it to you.

Mr. Sharpe: It isn't tendered. Where is it?

The Court: They said they would bring it.

Mr. Sharpe: That isn't the way to prove a case, Your Honor, put the underlying data in first.

Mr. Schweppe: Does he want to try the case for six months?

Mr. Sharpe: No, but I withhold my decision about requiring the evidence until after my cross-examination of the witness. If it is apparent it would be useless and unnecessary to produce the evidence, I will be glad to waive it if it is possible for us consequently to waive it.

[fol. 102] Mr. Rupp: That document, I take it, is in.

The Court: That is 16.

Mr. Sharpe: It is in, then, over my objection, because I——

The Court: Yes.

Mr. Sharpe: I haven't had an opportunity to object to the time it was offered: I don't think it had been received. It certainly wasn't until I made my objection to it.

The Court: It may be understood your objection was

made and the record may show your full objection prior to the receipt of it.

Mr. Sharpe: Your Honor is receiving it unqualifiedly at this time?

The Court: The same as the other exhibits. You will not be precluded.

Mr. Sharpe: Your Honor holds the document is admissible without the production of the underlying data?

The Court: You have just said in your objection you reserved the right to—(interrupted)

Mr. Sharpe: I don't think the document should be in until I have an opportunity to exercise my privilege in the regard. I stand on the objection at this time. I will be glad, if possible, to waive the objection, but I don't want to waive it at this time, or have it understood that it is waived in any sense of the word.

The Court: You are not waiving anything. I can't see [fol. 103] how there is any possibility.

Mr. Sharpe: I think Your Honor's ruling should be reserved until I have an opportunity to cross-examine.

Mr. Schweppe: Your Honor can admit it subject to the right of cross-examination.

The Court: That is what I was doing.

(The Pacific Telephone & Telegraph Company, subscribers' loop and supporting structures book cost statement admitted in evidence and marked plaintiff's exhibit No. 16.)

Mr. Rupp:

Q. This exhibit number 16 shows the total cost of various items of property comprehended under what you have termed subscribers' loops and supporting structures?

A. Yes, sir.

Q. The total cost as shown under that, reading "right of way exchange", for instance, $27,783.00, is taken from what source?

A. The books.

Q. The books of the company, and that is equally true of all of the figures shown in the first column?

A. Yes, sir.

Q. So is the total cost shown by the books of the company and reported to the Department of Public Works, $14,169,215.00?

A. For subscribers' loops.

Q. Out of this you find $13,108,077.00 was jointly used?

A. Yes, sir.

Q. Or 92.51 percent was jointly used of these particular items of property?

[fol. 104] A. Yes, sir.

Q. I think I can, perhaps, shorten this thing somewhat. For the purpose of this segregation, you have divided the property into subscribers' loops and supporting structures to which you just testified, and various other classes of property used, subscribers' switchboards, and so forth.

A. Every part of the property I described in this diagram has been set up separately.

Q. Do the eight sheets which I now hand you show as to the remaining items of property of the company as shown by the books of the company and reported to the Department of Public Works, the total cost of that property, the amount jointly used, or exclusively used locally, or for toll?

A. Yes, they do.

Mr. Sharpe: I——

Mr. Rupp: It is the same thing as the other. I am going to give him a copy now.

Now, I offer the remaining eight sheets to which I have just referred as a portion of exhibit 16.

Mr. Sharpe: I object, Your Honor, on the ground it appears from the exhibits that the same is made up from data taken from the books of the company and that the underlying data from which the exhibits are prepared have not been received, offered or received in evidence. I also object upon the ground that the exhibits and the data shown [fol. 105] in the exhibits is wholly immaterial and irrelevant to the matters at issue in this case, which is the validity of the occupational tax law applied to these particular companies.

The Court: It may be admitted with the same understanding as heretofore.

(Eight sheets above referred to admitted in evidence as an additional part of exhibit no. 16.)

Mr. Rupp: I never want any controversy with any counsel at any time. If it is desired that we produce the books and the maps and records from which these figures are derived, we will do it. If Mr. Sharpe doesn't want then pro-

duced, that is something else. I am perfectly willing that he shall have an opportunity to cross examine and then state his attitude, but I want the record clear to show I am willing to produce this mass of material which underlies these exhibits for his examination, and if necessary in this courtroom, I quite agree it might take a whole railroad train to bring them, but I agree to bring them. But we are now offering to produce the original record of each and every one of these figures.

Mr. Sharpe: I am not in a position to say yet whether or not I make the request for the production of the underlying data.

Mr. Rupp:

Q. You have prepared, have you not, a summary sheet [fol. 106] summarizing the figures shown on exhibit 16?

A. Yes, sir.

Q. By these various classes you have used in making up 16?

A. Yes, sir.

Mr. Rupp: I offer that in evidence.

Mr. Sharpe: Same objection. I understand 16 was the original, together with the additional eight pages.

Mr. Rupp: Had I thought of it, I would have put it in with it because it is a mere summary.

The Court: Do you want it as 17 then, or part of 16?

Mr. Rupp: I think we will make that a separate one.

(Pacific Telephone and Telegraph Company summary of jointly used property admitted in evidence and marked plaintiff's exhibit 17.)

Mr. Rupp:

Q. Now, Mr. Mastick, for Mr. Sharpe's benefit and in order that he will not be misinformed about anything whatsoever, will you tell us a little bit about how you arrived at the figures admitted about which you testified at the beginning of today's procedure? How many people were engaged in that task?

Mr. Sharpe: The message he described? What was that question?

Mr. Rupp: I want him to tell how, in part, the figures

to which you are objecting were derived, the mechanics he went through to get them.

A. Well, in the first place, as I said earlier in the day, we had five million tickets available to study. We analyzed of those one million, two hundred fifty thousand. [fol. 107] To do that we had to organize a force of people which at times ran as high as one hundred fifty, and averaged, over a period of nearly ten months, some twenty or twenty-five people. Particular analysis of toll tickets took a crew of thirty-five experienced toll operators six weeks to segregate the information necessary to determine the time use and distance that those messages were hauled over the circuits of the company.

Mr. Rupp:

Q. Well, in addition to this examination of this one million, two hundred fifty thousand toll tickets, what else did these people do?

A. Now, in addition to the examination of the tickets—I might say that the toll tickets themselves only show the time the subscribers used the circuit. The time the operator used the circuit was determined by analyzing some fifty thousand tickets over a period, I believe, of approximately five days; that is, I mean, a bunch of time tickets accumulated over five days for the holding time of the circuit as far as the operator was concerned, was determined. The holding time was added to the subscribers' time, giving the total time the circuit was used for any call and drawn down finally for all calls.

Q. What else was done?

A. The tickets—I don't know as I quite get it——

Q. The calls, themselves, were observed, the boards and so forth, were they not?

A. Oh, yes, in connection with determining the time use of other parts of the property: the subscribers' switchboards, switching trunks, subscribers' lines and so forth. [fol. 108] We made service observations of the various subscribers' switchboards throughout the state, counted the number of messages and the number of connections that were put up on these switchboards over an interval of time and from those things we were able to determine the total annual time use of each of these elements of property I have been discussing.

[fol. 109] Mr. Mastick (on stand).

Mr. Rupp:

Q. I think you have stated, but I am not quite certain and want to be, why did you analyze this million, two hundred fifty thousand of toll tickets?

A. I analyzed those toll tickets because we wanted to find out how to apportion between interstate and intrastate the expenses, the revenues and the property of the company in the state of Washington.

Q. Now, going back to one of the earlier exhibits in this case which shows the separation of revenues between intrastate and interstate,—what exhibit number is that? Exhibit number 12 for 1933 and exhibit number 11 for 1932, for the Pacific Company. The books of the company disclose the entire amount of interstate revenue for the Pacific Company for the years 1932 and 1933?

A. No, sir, they do not.

Q. What do they disclose?

[fol. 110] A. The amount of interstate revenue derived from message tolls. That is for inter-exchange business. That is, toll calls between exchanges.

Mr. Sharpe: Between exchanges of the Pacific Company? You mean exchanges owned by the Pacific Company?

A. No, between any exchange—all exchanges.

Mr. Rupp:

Q. Where the message crosses the state lines?

A. Yes, sir.

Q. It discloses Washington's proportion of the revenue derived from a message, say originating in Tacoma, going to New York?

A. Yes, sir.

Q. And Washington's proportion of that is based on a per line haul revenue?

A. Yes, sir.

Q. Is that true of all interstate messages?

A. Yes, sir.

Q. That is shown on the company's books?

A. No, sir.

Q. Is that amount for 1932 as shown by the books of $1,123,536.49 shown in the first line of your exhibit 11?

A. No, sir.

Q. Why not?

A. Because of this fact. In the rate structure of the telephone business, we have two subdivisions. We have what is known as exchange rates and what is known as inter-exchange rates. The exchange rate is the rate of the [fols. 111-116] monthly amount a subscriber pays for his local exchange service, for connections within the exchange area, anybody he wants to call. That also includes access to the toll board when he wants it for inter-exchange business, intrastate or interstate business. The inter-exchange rates of the company are as between exchanges from the toll board in one exchange to the toll board in another exchange. Consequently, in the revenues from the subscribers' service, there is a certain amount of money which is allocable to the toll. The Supreme Court of the United States, in its recent decision in Smith versus the Illinois Bell Telephone Company, I think, 282 U. S., 133, laid down the rule that toll service was to be considered as starting at the station and terminating at the station. That is, from the originating subscribers' transmitter to the receiver of the terminating subscriber and it is that amount of money that has to be added on the books to the amount of interstate business shown by the books to give the interstate toll of $1,123,536.49.

[fol. 117] Q. Now, then, Mr. Mastick, what, as shown by your exhibit of the property of the Pacific Company, what is jointly used in the year 1932 and the year 1933? You have the percentage right there, I think.

A. The percentage of property jointly used in local intrastate toll and interstate toll by the Pacific Telephone and Telegraph Company in the state of Washington was 88.48 percent.

[fol. 118] Q. That is for the year what?

A. For December 31, 1932. That is the only study I have made.

Q. What would be the effect of the Pacific Company, first, abandoning its interstate business in the state of Washington, its intrastate business in the state of Washington?

Mr. Sharpe: I object to that as calling for a conclusion of the witness. The Court can determine from the evidence before it.

The Court: He may answer.

A. In the first place, if we abandoned the intrastate business for solely interstate business, we would have to retain nearly 90% of the property to do it. The revenues received from the interstate business, $1,123,536.49 is approximately one-tenth of the total gross revenues received from the combined intrastate and interstate business. Now, it is obvious, even from the standpoint of taxes alone, that if we had to retain 90% of the property to do interstate business, the taxes alone would wipe out the gross interstate revenue, to say nothing of the maintenance to be paid for on the 90% of the plant retained, the depreciation on the property and other expenses that goes with the operation of the property. As I see it, to do solely interstate business and retain 90% of the property, we would go broke.

[fol. 119] Q. You could raise the rates?

A. We would have to raise it twenty or thirty times what it is today.

Q. Do you think you could do business under that schedule of rates?

A. No, sir.

Q. Well, could you efficiently and economically conduct an interstate business over one system and an intrastate business over another system?

Mr. Sharpe: I object to that as calling for a conclusion of the witness, a matter of expert testimony, that the Court is called upon to determine in this case.

The Court: He may answer.

A. Your Honor, I have been in this business twenty-eight years and as chief engineer of this company in this area of the states of Washington, Idaho and Oregon, I designed and prepared estimates for more than $40,000,000 gross plant additions in those three states and know you could not economically or practically separate the property to carry on interstate and intrastate business.

Q. Do you know of any place in the world where a purely interstate telephone plant is built and purely interstate business is conducted?

A. No, sir, I do not.

Q. I think possibly, for the benefit of Court and counsel, that upon the summary sheet for the Pacific Company, at least, you should explain why no figures appear on that

sheet under the items 10, 11 and 12, being program sup-
[fol. 120] ply, leased plant to A. T. & T. Company and Clarkston, Washington.

A. Program supply and plant leased to the A. T. & T. Company is an interstate business. Clarkston, Washington presents a very peculiar situation. It is served by the Lewiston exchange. There is no exchange in Clarkston. The subscribers' loops run to Lewiston, Idaho. The local service is interstate.

Q. When two people in the city of Clarkston talk to one another, the call is interstate?

A. Right.

Q. Because it has to go across the State line to Lewiston and back to the other subscriber in Clarkston, across the Stateline?

A. Yes, sir.

Q. That you have considered purely interstate?

A. Yes, sir.

Q. The leased line, or the plant leased to the A. T. & T. Company is leased in connection with the operation by the American Telephone and Telegraph Company of a circuit running from Seattle across the State line to the east?

A. Yes, sir.

Q. And of course, program supply, being radio, is purely interstate?

A. Yes, sir.

Q. You have had something to do with the designing of the telephone property, have you not?

A. Yes, sir.

Q. You designed about $40,000,000 worth of it?

[fol. 121] A. Yes, sir.

Q. What would you say as to whether the property is necessarily designed to do both classes of business, both intrastate and interstate simultaneously with physical use?

Mr. Sharpe: I object to the last of that as calling for a conclusion. The first part, I don't think is objectionable. I will object to it on the further ground the question is dual in its nature and submits to the witness two or more questions, and calls for a conclusion of the witness. I object to the last part of the question because it calls for a conclusion of the witness and that is a matter for the determination of the Court in this case.

The Court: He may answer.

A. Well, the Telephone Company sets itself up to give a universal service, and that includes both intrastate and interstate service and the plant is designed to handle both classes of service simultaneously or at different times over the same facilities operated by the same employees through the same exchanges.

Mr. Rupp: I think, Mr. Sharpe, you may inquire.

[fol. 122] Cross-examination.

By Mr. Sharpe:

Q. Mr. Mastick, you are the general staff engineer of the company, and in response to a letter from the Tax Commission to the Pacific Telephone and Telegraph Company, you prepared a letter and statement as to the taxes and assessments on real and personal property taxes paid in the state of Washington, and the assessments on real and personal property under date of July 19,1934, did you not? The two statements covering the Pacific—the operating property of the Pacific and Home Telephone Companies for the years 1932 and '33? I will ask you—show you this document.

A. Yes, sir, I prepared these. They were prepared under my supervision.

Q. They are correct, are they?

A. To the best of my knowledge, they are, yes, sir.

Mr. Sharpe: I ask that they be received in evidence. I wish the privilege of substituting copies because they are the only ones we have.

Mr. Rupp: Never have any hesitation about that. No objection.

(Letter of July 19th, 1934, together with statements of taxes and assessments admitted in evidence and marked defendant's exhibit number 19.)

Mr. Sharpe: At this time I wish to withdraw this and let Mr. Olaison make a copy of it. You may check it.

Mr. Rupp: All right.

[fol. 123] Mr. Sharpe:

Q. You stated, Mr. Mastick, when you said that the, I believe you stated in connection with the payment of the

taxes, that neither the Home Company nor the Pacific Company had paid any portion of the occupational tax imposed under the terms of chapter 191, Laws of 1933?

A. Yes.

Q. Have they paid any taxes under the law of the city of Seattle, imposed by the occupational tax of Seattle?

A. Not in the years 1932 and '33.

Q. Did they, in the year 1934?

A. Seattle occupational tax.

Mr. Rupp: I can answer. I think they paid $661,000 in the months of June, July and August, being the payment for that portion of the year 1932, all of the year 1933 and that portion of the year 1934 to the time, the months of June, July and August.

Mr. Sharpe: That is the city ordinance attacked in the United States Supreme Court and sustained by the State Supreme Court, reported in 174, Wash.

Mr. Rupp: Yes, sir.

Mr. Sharpe: And appealed to the United States Supreme Court.

[fol. 124] Q. Mr. Mastick, you say the books of the company show the apportionment to the different states of [fol. 125] revenue from interstate toll calls? There is a showing of that kind made on the books of the company?

A. I mean to say the books of the company show the interstate revenues that accrue to Washington.

Q. That accrue to Washington.

A. Not on our books. The books of the Pacific Company do.

Q. Somewhere?

A. Yes.

Q. In other words, they apportion the interstate revenues by states?

A. Correct.

Q. On their books?

A. Yes, sir.

Q. In some way which you say is not strictly in accordance with the 282 U. S.

A. I think you misunderstood it. They make the apportionment to the states, the Pacific Company does, on a mileage haul basis of revenue from inter-exchange business.

Q. You say a mileage haul basis. That is mileage of line, you mean?

A. Yes, sir.

Q. For instance, if there is any interstate long distance call originating in Washington or terminating in Washington and the mileage of line in Washington is one hundred miles and mileage of line in Oregon is two hundred miles, Washington would be apportioned one-third and Oregon two-thirds of the revenue from the long distance toll as shown on your books?

[fol. 126] A. Yes, sir.

Q. That is the method you used with the division of all inter-exchange tolls in your books?

A. Yes, sir.

Q. The exchange itself has no part, portion of the revenue in either case? At either end, on the books of the company?

A. No, sir.

Q. It is your effort to give the exchanges some consideration in the division of this revenue on long interstate tolls that you have modified to some extent the showing made on your books?

A. That is what the Supreme Court says we have to do.

Mr. Rupp: I think you are both wrong.

Mr. Sharpe: Explain why you did it then.

Mr. Rupp: I will explain. Certain portions of the toll revenue, a certain portion of the originating toll revenue in Olympia is credited to the Spokane exchanges as compensation for the work which it does in connection with that toll business. That is right, isn't it?

A. You mean the Olympia exchange; yes.

Q. Mr. Sharpe: You mean that is in the ordinary course and is reported on your books?

Mr. Rupp: I don't know if it is set up on the books, but the exchange is compensated for the work it does in connection with a toll message, and we attempt to derive what is a fair return on the property in the city of Olympia. We take twenty percent of the toll business originating in the [fols. 127–129] city of Olympia, and say that is to be credited to the exchange as revenue for the exchange to compensate it for the work in toll business.

A. Yes, sir.

[fol. 130] Mr. Sharpe: You say you compared some 5,000,000 tickets for the year 1933, to segregate, find out what happened to each of the messages?

The Witness:

A. I said we handled about 5,000,000 toll messages or more, and analyzed 1,250,000 of them.

Q. A quarter of them?

A. Yes.

Q. You didn't have to go through them one at a time to find which involved interstate and which local messages?

A. We certainly did. That is what the 150 people were doing for six weeks.

Q. Your company hasn't adopted a plan for segregating local from the interstate business, isn't that why you had the difficulty?

A. What purpose is there for the company to make that [fol. 131] segregation? It is only to meet the demands of the regulatory bodies.

Q. Do you make the statement in the books?

A. They are analyzed currently, those tickets, month by month.

Q. You could keep the books in shape to show the apportionment to the States in these interstate tolls?

A. No, they can't do that. They can, so far as the interexchange business is concerned, but not the local exchange.

Q. There is no interstate local exchange except for Clarkston?

A. That is the only case exchange service is exclusively interstate. Every exchange has some use of the property in interstate business.

Q. You mean 282 U. S.?

A. Under that ruling.

Q. You don't think you could do it in entering the tickets on the books, make the allowance to the exchanges?

A. No.

Q. And still you are satisfied, in making the apportionment, not to allow in these, long and partial incoming, the long distance tolls between stations, you are satisfied with a system which yields its receiving station nothing at all as their part of contribution to the long distance toll?

A. I don't think that has anything to do with the intrastate and interstate proposition.

Q. If it is fair between stations, isn't it true in the interstate?

[fol. 132] A. We operate in the state of Washington one hundred ten exchanges. Each is compensated by twenty percent of the originating toll business. It works itself out and compensates one to the other, and we don't have to take into account the incoming business. We figured it out the twenty percent is a yard stick to compensate the same exchanges.

Q. You fall back on averages to compensate the station?

A. Yes, sir.

Q. And give the originating station twenty percent and the receiving station nothing, on the basis they will reciprocate?

A. Yes, sir.

Q. Now, we will take your—now take plaintiff's exhibit number 11. I think you have a copy of it there. The first item is gross operating revenues. And under—in the first vertical column, you have an item of ten million dollars plus.

A. Yes, sir.

Q. Those revenues are for the year 1932?

A. Yes, sir.

Q. And on plaintiff's exhibit number 12, there is a corresponding column for 1933?

A. Yes, sir.

Q. Which is nine million dollars plus. Those are all pure—are revenues from purely local business, are they not?

A. Intrastate business.

Q. Now, the next vertical column shows the revenues from interstate? The revenues or money items shown in [fol. 133] that vertical column are what you consider the state's proportion of the revenues received from interstate long distance calls?

A. I don't know as I understand.

Q. Plus what you get from telegraphs?

A. This includes all services we render. The total, the $11,456,965.46 is the total gross revenues for all services in the state of Washington. The second, just to the left of that, are the interstate apportionments of that, arrived at, and is as I heretofore testified to.

Q. And first shows for Washington for all services?

A. Yes, sir.

Q. The next shows the Washington proportion of the interstate?

A. That is right, yes.

Q. And those are the interstate revenues developed by Washington and their pro rata on interstate revenues incoming?

A. Yes, sir.

Q. The next item, B, licensee revenue debtor.

A. The amount paid to the American Telephone and Telegraph Company for services they render us.

Q. In what connection?

A. In connection with all sorts of things such as engineering advice, accounting advice, commercial and traffic advice, operating advice of all kinds. That payment is made under the license contract with the American Telephone and Telegraph Company to furnish us services of all sorts and characters and to permit us to use their patents, [fol. 134] and so forth.

Q. What is it, a percentage?

A. One and one-half percent, yes, sir.

Q. You pay the American Telephone and Telegraph Company, the parent company owning the most of the stock, one and one-half percent of the revenues received by you from all sources?

A. Yes, sir.

Q. Which you call licensee revenues?

A. Yes, sir.

Q. And you say it is paid out to compensate the parent company for certain services rendered by that company to you?

A. Yes, sir.

Q. Why isn't it charged as an operating expense instead of a revenue?

A. Under the new accounting circular, it is considered an operating expense. Under the old requirements to December 31, 1932, the first issue of the Interstate Commerce Commission circular, it was deducted.

Q. Which do you think is the proper way, as an accountant, not doing it as the Interstate Commerce Commission says, but looking at it as an accountant, which do you think is the proper way?

A. I don't set myself up as an accountant.

Q. You have made out the income statements?

A. One doesn't have to be an accountant to do that. I have taken the figures from the books and apportioned them and set them up in that form.

Q. Who is here as an accountant?

[fol. 135] A. Mr. Sheldon.

Q. The next item is item D, total operating expenses. Now, where do you get those operating expenses for the report to the Department of Public Works? Where is the report?

Mr. Rupp: Right there.

A. It is 1932, isn't it? On one of the inserts we furnish the Department of Public Works.

Mr. Sharpe:

Q. What is the amount for 1932?

A. The amount for 1932 is $7,967,601.12.

Q. You have $7,512,247.00.

A. That is intrastate.

Q. Intrastate. And the total $8,213,000.00 on your statement.

A. There are certain other deductions not reported in 1932.

Q. One of those deductions is depreciation, is it not?

A. No, sir.

Q. What? Don't you treat depreciation as an operating expense?

A. Depreciation expense is given here in the report.

Q. Is it?

A. Oh, yes.

Q. Well, if it is given there—(interrupted)

A. Depreciation of plant and equipment, $2,464,912.03.

Q. Is it shown on these statements?

A. It is shown on page 303, account 320, telephone operating expenses, line 29.

Q. How much?

[fol. 136] A. $2,464,912.03.

Q. How do you arrive at that $2,464,912.03 for the year 1932? Do you take a certain percentage of the equipment, plant and so forth, or certain items of your accounts?

A. Mr. Sharpe, we determine yearly a depreciation rate to be applied to all classes of telephone plant.

Q. Applicable to all classes?

A. For each class of property we determine a separate depreciation rate.

Q. And multiply that rate when it is approved by somebody? Who is it does it?

A. As I recall it, we furnish the Department of Public Work with those depreciation rates we use in computing these figures and furnish them to the Interstate Commerce Commission of the United States.

Q. And also use them in making up your books?

A. Certainly.

Q. You use a different rate as to each item each year?

A. Whenever there is any change in conditions, in service life, or that sort of thing, yes.

Q. Do you change those depreciation rates as to different items of equipment ordinarily each year or do you not?

A. I think not. I think we change them whenever it seems there has been some change in the art, or something of the sort, which requires a change of charge for the types of equipment and so forth. If it is necessary, we make them every year; if not, when it is necessary.

Q. Have you any record on your books as to the total accrued depreciation of your plant and equipment in the State of Washington?

[fol. 137] A. Depreciation reserve?

Q. Yes.

A. No, sir.

Q. You don't keep that for the system?

A. Yes, sir.

Q. Where in your books, in your reports, do you show the accrued depreciation reserve?

A. In the annual report, I suppose it is shown here on some page, if I can find it. May I inquire of Mr. Sheldon? He is more familiar with the pages of the reports than I am.

Mr. Sharpe: Surely.

Mr. Rupp: Of course.

Mr. Sharpe: 224, page, would that be correct?

Mr. Rupp: I can't see how the amount of reserve has anything to do with this page, but I am not going to object to it. It has——

Mr. Sharpe: You have shown what percentage of return

you are getting on your cost. Let's see how much you are getting on your cost less depreciation.

Mr. Rupp: Less depreciation of what?

Mr. Sharpe: Depreciation of additions and betterments. I presume you keep your books right.

Mr. Rupp: The depreciation shown in the annual report for the company as a whole is an expense item and has nothing to do whatsoever, either with the value of the property, or the cost of the property, or anything else. There is no more connection between them than between [fol. 138] daylight and darkness. One is an expense and the other is a different item. You can't subtract apples from pears and get melons.

Mr. Sharpe:

Q. Do you have anything to do with the determination of the depreciation factors?

A. No, sir.

Q. Who determines those each year?

A. They are determined by the inventory and cost engineer.

Q. And have been for a long number of years?

A. Yes, sir.

Q. Ever since you have been in business, you have been doing the same thing?

A. Yes, sir.

Q. And each year, of course, this depreciation reserve increases, does it not?

A. Well, I don't know as I could say that.

Mr. Rupp: I can answer it. It does not. It goes up and down. Some years it is more than it was the year before, and sometimes it is less.

Mr. Sharpe: In other words, this depreciation allowance is supposed to make good the actual physical depreciation of the property in which, of which the plant and equipment of the company consists, is it not?

A. It is to take care of—(interrupted).

Q. Actual physical deterioration of it?

A. To take care of the property.

Q. On page 224 you show the accrued depreciation to be [fol. 139] $57,765,570.78?

A. 224?

Q. Page 224, I think, of your annual report to the Department of Public Works.

Mr. Rupp: That is right as shown for that year, it is $57,000,000—(interrupted).

A. $57,765,570.78.

Mr. Sharpe:

Q. For the year ending December 31, 1932?

A. Right.

Q. What is it for the year ending December 31, 1933? Page 238 in that report. Depreciation reserve. All right, for 19——

Mr. Rupp: Balance at the close of the year?

Mr. Sharpe: As of the end of the year 1933, the depreciation reserve was $56,636,997.39, was it not?

A. Yes, as shown by the report.

Q. As shown by the report. Now, then, for year—will you turn to your report for the year ending 1932, and find out the total investment in plant and *investment* of the company?

A. For the state of Washington?

Q. No, for the system.

A. All right. I have it.

Q. What page?

A. Page 204, line 43, column E.

Q. All right, the total investment in fixed capital installed?

A. That is right, the entire fixed capital installed.

Q. As of the end of the year 1932, was $246,108,035.61, was it not?

[fol. 140] A. Yes, sir.

Q. And at the end of the year 1934 you had a similar statement somewhere?

A. '33.

Q. Page 33?

A. No, I say 1933.

Q. Where do you find it in this one?

A. Page 202.

Q. All right, for the end of the year 1933, investment in telephone plant for the system as of the end of the year 1933? $247,446,618.85?

A. That is right.

Mr. Rupp: Except in one respect. That is not the system investment, that is the company investment.

A. Company investment.

Mr. Rupp: That is entirely different. We would have several million to add for system. We would have several hundred million to add for system. This is company figures. You asked if that was system figures. The Pacific system is—the Pacific system and the Pacific Company are two different animals.

Mr. Sharpe:

Q. You say that is the amount standing in the name of the Pacific Telephone and Telegraph Company that is referred to there?

A. Yes, sir.

Mr. Rupp: I didn't want to get the system and the com-[fol. 141] pany mixed. We are dealing with two hundred forty-seven million dollars in one case and four hundred fifty million dollars in the system.

Mr, Sharpe:

Q. State whether or not the figures you have given with respect to investment in telephone plant, of it belonging to the company, we will say, not belonging to the system which, in the case of the year 1933, was two hundred forty-seven million dollars plus compares with your figures in plaintiff's exhibit 6 in the fourth vertical column, amounting to fifty-six million dollars plus.

A. That is the actual performance appraisal, not the amount on the books.

Q. In what respect does this differ from the figures on the books?

Mr. Rupp: About seven hundred thousand dollars difference.

Mr. Sharpe: About seven hundred thousand dollars for the entire system?

A. For the state of Washington.

Mr. Sharpe:

Q. The actual, the item investment in telephone plant is the equivalent, is it not, in meaning and terms and limita-

tions of actual performance and appraisal? In what respect do they differ?

Mr. Rupp: I think I see what you want. You are trying to compare the figures of the report for the Pacific Company as a whole with the figures for the state of Washing- [fol. 142] ton. The one comparable thing is the amount on the books. That is plaintiff's exhibit 1, rather than plaintiff's exhibit 6.

Mr. Sharpe: The amount on the books. The comparable figures with the item investment in telephone plant appearing on page 202 of the report of 1933 would be column 4, vertical column 4, of plaintiff's exhibit 1.

Mr. Rupp: It would be the last figure for 1933, the total for the year?

A. Yes.

Mr. Rupp: No, again you are trying to compare two entirely different animals. The figures shown on page 202 of the annual report to the Department of Public Works for the Pacific Company for December 31, 1933, can not be compared with any of the figures directly in these exhibits and the reason for it is plain and apparent and obvious. These figures, the figure shown, 1933 total, at the end of the year, as you will notice, includes average working assets of $1,565,594.00, and there is not shown on page 202 of the report to the Department any average working assets for the Pacific Company as a whole. There are, of course, other reasons you can't directly compare them, but that is—(interrupted)

Mr. Sharpe: All right, I will concede the last reason is one, and probably a good one, but what are the other [fol. 143] reasons you can't compare them?

Mr. Rupp: You could compare them, but what would you get when you got it?

Mr. Sharpe: In what respect do they not correspond, the one within the State and the other for the system?

Mr. Rupp: Obviously, of course. Things like right of way, land, buildings and central office equipment; if you wanted to find a ratio between the amount shown on the books of the Pacific Company for land, buildings, right of way, central office equipment, as compared with the figures shown on page 202, a direct comparison can be made. That is quite true. But I don't know what it would get

you when you got it, because down here you have undistributed cost of property, $441,970.56. You will remember that we have taken out of this figure here shown on plaintiff's exhibit 1, a figure of something over $12,000.00, which is the undistributed cost of property in the state of Washington of the Pacific Company and you would have to subtract out those figures again to make a comparison.

Mr. Sharpe: Other than that, there is no reason why we couldn't compare the exhibit 1 with the page 202.

Mr. Rupp: By making those changes, I suppose, you [fol. 144] could compare them. I would give you a ratio between plant and equipment for the state of Washington as compared with the company as a whole, but it wouldn't tell you anything more about the depreciation reserve than if you said you walked five miles to Olympia in one pair of shoes and could eat ten apples tomorrow, because there is no direct connection between them.

Mr. Sharpe:

Q. In other words, with the total investment, first, I want to say, in this investment in telephone plant, there is no deduction for depreciation, is there?

A. As reported on the annual report?

Q. As reported on page 202.

A. No.

Q. Then the investment in telephone plant as of the end of 1933, for the company is $247,000,000 plus, as already shown?

A. Yes.

Q. And the depreciation reserve for the same items of property covered in this investment in telephone plant are shown on page 238 to be fifty-six million dollars plus?

A. Yes.

Mr. Rupp: That isn't true, either, because—I just want to keep you straight, because in these figures shown on page 202, there are items of property that are not depreciable. We can turn to page 238 and turn to the items of [fol. 145] property to which the reserve relates, if you want to put it that way, there are some items on page 202 that are not on page 238. For instance, in this 247 million dollars, as I pointed out a minute before, there is undistributed cost of property in the sum of $441,000,000. There

is no comparable space here under the reserve for that particular item of property.

Mr. Sharpe: In other words, there are some things you don't depreciate at all. You wouldn't depreciate real estate, would you?

Mr. Rupp: No, of course.

Mr. Sharpe: I say, out of the total shown in the item on 202, I have pointed out and demonstrated investment in telephone plant, there are items for which a reserve has been set up of some fifty-six million dollars plus.

Mr. Rupp: That is a more correct statement.

Mr. Sharpe:

Q. You say you don't keep track of your accrued reserve by states?

A. No, sir. It is a system total.

Q. Is there any reason why the same relation would not apply between the depreciation reserve and the investment in company's plant for the entire company, Pacific Company, and in the state of Washington, why the same relation should not exist between the depreciation reserve and the investment in the company's plant for the entire company and with the state of Washington? Is there any rea- [fol. 146] son the same relation should not exist as between the two?

A. I never thought about it.

Mr. Rupp: Let me ask you a simple reply question.

Mr. Sharpe: I am talking to the witness now. In this particular case it is all right.

A. I don't know.

Mr. Sharpe:

Q. You don't know. Is there any reason why a different percentage should apply in the state of Washington than the company as a whole as between depreciation reserve and the total investment in plant?

A. I have never thought about it, Mr. Sharpe. I can't answer.

Q. You couldn't tell, except by personal analysis of every piece of equipment and piece of property in the state, to determine whether there is any difference as between that

percentage in the state and the percentage for the company as a whole?

A. There are undoubtedly different rates of depreciation in different states under different conditions. On that basis, I would say we couldn't.

Q. You would have to analyze the property?

A. Yes, sir.

Q. To determine whether there was a difference in the state of Washington and for the entire country?

A. I don't know how else we could find out.

Mr. Rupp: Perhaps I can clear you up. The fact is, a study is being made, and has been going on for a year and a half, to see if we can ascertain how this reserve can be [fol. 147] apportioned to the state. The Interstate Commerce Commission has requested such action, and the study has been under way for a year and a half, but it is not completed, more than that this must be true: Suppose we operated in three states, and in one we made six percent, and in the other we didn't take in enough to set up a reserve. The minute we tried to apply a reserve for the whole company against a state that never made enough to set up a reserve, we are going to get a wrong result. How are the people of the state of Washington to look to a reserve set up in California?

Mr. Sharpe: You have set up your reserve, and I am using it for this purpose.

Mr. Rupp: You can't use it for this state.

Mr. Sharpe: Let us know, then, what it is.

Mr. Rupp: Nobody knows, because nobody ever asked us to set up a reserve for a state except within the last year and a half, and we are endeavoring to make the study and it is a long, complicated job and, in my estimation, doomed to failure because you have to take into consideration what you take in.

Mr. Sharpe:

Q. Now, we seem to have a little time before five o'clock. We will study this picture.

Mr. Rupp: They, after all, are usually agreeable things.

[fol. 148] Mr. Sharpe:

Q. Referring to plaintiff's exhibit number 15, I guess you have a copy of it there. Now, the first area, we will mark "A".

A. I called it Seattle in my testimony.

Q. We will call this "B" and the one to the extreme left, "C". I think it will be simpler to call the areas A, B and C, and if Your Honor doesn't object, I would like to have them marked that way. Well, we really should mark this lower one "B" because the other merely carries it through.

All right, now. You have assumed, in preparing this study shown by plaintiff's exhibit number 15, that the Pacific Telephone and Telegraph Company own all the equipment and plants of A, B and C, all of the plants shown upon the exhibit?

A. I don't know as I said anything about it, but it is all right to assume that.

Q. All right, let us assume that the Pacific Company owns all the plant shown in the multi-office exchange.

A. Yes, sir.

Q. Plant A. And that a foreign company, other than the Pacific Company, owns plant B, and that the Pacific Company owns the connecting lines, the lines that connect plant B with plant A. Is there, in the state of Washington, any situation in which the—we will speak of plant B as a local exchange area, is that fair?

A. That is fair, yes.

Q. And plant A as a local exchange area, plant A belonging to the Pacific Company, plant B to a foreign company, [fol. 149] let us say the Home Company of Castle Rock.

Mr. Rupp: That isn't a good illustration, because we own 100% of it. Take Ellensburg, because that is purely an independent outfit.

Mr. Sharpe: Well, assume B is Ellensburg, then.

Q. Are there situations where the connecting line such as plant B on plaintiff's exhibit 15 is owned by an independent company, independent of the Pacific Company?

A. You mean the exchange property is independent of the Pacific Company? Yes, at Ellensburg.

Q. Do you make connections of long distance service between Ellensburg and Seattle?

A. Yes, sir.

Q. In what way does the making of the connection between Ellensburg and Seattle differ from the method of making connections between Olympia, where the company owns the plant, and Seattle?

A. None at all.

Q. In what way does the character of the property utilized in the Ellensburg plant differ from the plant in Olympia in making the connection?

A. Not at all as far as the exchange plant is concerned.

Q. Who owns the line between the Ellensburg Company and Seattle, toll lines?

A. The Pacific Company.

Q. Who owns the toll office, the equipment in the toll office in Ellensburg?

A. I presume the Ellensburg Company owns it.

Mr. Rupp: They do. I am attorney for them. I know.

Mr. Sharpe: I thought you said it was wholly independent.

[fol. 150] Mr. Rupp: It is, but they see no objection to hiring me. They thought I knew something about the telephone business, I guess, but I know as a matter of fact, as a matter of actual fact, that the toll switchboard in Ellensburg is owned by the Ellensburg Telephone Company, that being a trade name for John M. Faust.

Mr. Sharpe:

Q. We will speak of Ellensburg as a foreign exchange area.

A. Yes. You mean an independent exchange?

Q. Yes. How many independent exchanges are there in the state of Washington comparable with Ellensburg?

A. In size or exchanges?

Q. In number of exchanges?

A. I would say in the vicinity of one hundred—or one hundred two.

Q. In the vicinity of a hundred. Is there any case where an inter-exchange toll service is rendered between each one of these one hundred two foreign exchanges and exchanges belonging to the Pacific Telephone Company in the same manner as toll service is rendered between Olympia, belonging to the Pacific Company and Seattle, belonging to the Pacific Company?

A. If they connect with the Pacific system; they are all handled the same.

Q. Don't all of these one hundred two companies connect with the Pacific system?

A. I presume they do, yes.

Q. And the inter-exchange service, which is the toll [fol. 151] service, is handled in exactly the same way between each of those one hundred two companies and exchanges belonging to the Pacific Company as between stations belonging to the Pacific Company?

A. Yes.

Q. In how many of those one hundred two exchanges or the areas occupied by those one hundred two foreign exchanges, does the Pacific Company have duplicate services and duplicate equipment, and duplicate plant or a duplication of plant and equipment?

A. We don't have any plant and equipment in the independent exchanges. They operate it themselves. The exchange service is delineated by the Department of Public Works.

Q. Non competitive? You couldn't compete with them?

A. No.

Q. You don't have any duplication of plant and equipment?

A. No.

Q. Do you have duplication of plant and equipment with any exchanges in the state of Washington belonging to another company?

A. No, sir.

Mr. Rupp: Maybe I can help you a little. The West Coast Company operates in the counties of Snohomish, Island, Skagit, and possibly in Whatcom County. They own and operate—own and operate the exchanges in that county. They have toll lines of their own and we do have a toll line running through those counties. To that extent, there [fol. 152] might be duplication.

A. But there is no competition.

Mr. Rupp: We both may have plant on the same road in those counties, but they also connect with us, Mr. Sharpe, that may help you.

(Whereupon an adjournment was taken until nine-thirty a. m. January 10th, 1935.

(Upon reconvening at nine-thirty a. m. January 10th, 1935, the following proceedings were had:

Mr. Mastick (on stand).

Mr. Rupp: Before Mr. Sharpe resumes his cross-examination, let me say I made a statement here yesterday which was erroneous. I stated that the amount paid to the City of Seattle for occupational tax levied by that city by the seventh of August, was $660,000 odd dollars. That was wrong. The amounts paid by the seventh of August to the City under the occupational tax ordinance was $488,922,02, $167,-708.75 of that amount having been paid on the seventh day of June, $221,286,34 having been paid on the seventh day of July, and $99,926.93 having been paid on the seventh day of August.

We did pay to the City of Seattle at about that time, a total, as I remember it, and I think I am still correct, of $660,000; the difference between this amount of $488,922.02 [fol. 153] and that amount arose in this fashion: After the City imposed this occupational tax, and while the litigation concerning that tax was continuing, the City imposed a further tax upon us of $13,000 and some odd dollars, roughly, each month. We had not paid that tax for many months and at the time we arrived at an understanding with the City of Seattle about all this tax matter, the payments that were due from us, assuming the ordinance under which that 13,000 odd dollars a month was valid, amounted to a sum sufficient to, which added to the $488,000 dollars brought total payment by the seventh of August up to $660,000.

I forgot yesterday, when I made that statement, that the amount paid included this 13,000 some odd dollars per month levied under another ordinance passed by the City of Seattle.

Mr. Sharpe: All right.

Q. Mr. Mastick, we referred yesterday to exchanges that were owned by companies that were independent of the Pacific Company or the American Telephone Company as foreign exchanges and the areas covered by those exchanges as foreign exchange areas, is that fair to use those terms?

A. Yes, if you use it with the understanding they are independent connecting companies.

[fol. 154] Q. Where long distance telephone messages are transmitted from foreign exchanges to exchanges of the Pacific Company, you have certain contracts, that is the Pacific Company, that is certain contractural relations with the company operating the foreign exchanges?

A. That is right.

Q. What are the terms of those contracts, are they of standard form? Is the same general form used with each of these companies or are there different forms?

A. I am not qualified to answer. I have never seen one of them, so I am not capable to saying anything of the detail.

Q. Who knows?

A. I know in a general way what the contracts provide regarding compensation to those exchanges.

Q. Which of the gentlemen of the company here would know of the forms of contract, if you know?

A. I don't think any of them would.

Q. You say you know in a general way what those contracts provide?

A. Yes.

Q. What are the general provisions?

A. Those general connecting exchanges usually get thirty percent of the originating toll revenues.

Q. Where the call originates with the foreign exchanges, thirty percent?

A. Yes, sir.

Q. Of the total toll from station to station?

A. The total. Thirty percent of the total originating [fol. 155] inter-exchange revenues, interstate and intrastate revenues.

Q. Whatever they are?

A. Yes.

Q. Then you have special provisions in regard to transcontinental tolls?

A. From connecting company exchanges?

Q. Yes.

A. I don't know them.

Q. You only get a certain percent for transmitting, a certain percentage of the toll for transmitting from Seattle to New York?

A. Our line haul. Whatever the relation of haul in our territory is to the total length of haul.

Q. It is transmitted over the American Telephone and Telegraph Company lines?

A. From Seattle, yes.

Q. Isn't that true of all territory of the Pacific Telephone and Telegraph?

A. No, it is all territory embraced by the Pacific Telephone and Telegraph Company in the states of Washington and Idaho.

Q. Not in California?

A. California would go over the central trans-continental line from San Francisco.

Q. Oh. Suppose you got a call from Seattle to Paris, what proportion would the Pacific Telephone and Telegraph Company get?

A. I don't know. We get our line haul, whatever it is. I don't know the arrangements for trans-oceanic messages.

[fol. 156] Q. Suppose you get a message to a ship on the ocean.

A. I don't know anything about those rates.

Q. Foreign exchanges get the same rate as inter-exchanges, thirty percent of the total?

A. It would get thirty percent of whatever the Pacific Company was entitled to on originating business.

Q. Suppose the message was received by this foreign line and originated on the Pacific line, would the foreign line get anything at all?

A. No, sir.

Q. Suppose the foreign line operated part of it, operated as a part of its system, a toll line like the West Coast. The West Coast operates in Everett, does it not, on local exchanges and also operates toll lines?

A. In certain of the counties, yes.

Q. Suppose a message originated on the West Coast line and was transmitted partly over the toll line of the West Coast and partly over the Pacific Company's lines. How would that be divided up, in the same way?

A. I don't know. I never had occasion to inquire into that particular situation.

Q. Who does know, anybody here? Do you know, Mr. Rupp?

Mr. Rupp: I will tell you what I think is the fact. I would have to check it. I think a call originating at Mt. Vernon in the West Coast Company's territory and going,

we will say, to Portland—the West Coast Company would receive that call, of course. It would go from Mt. Vernon to Everett wholly on the lines, if it went that way, on the [fol. 157] lines of the West Coast Company. My recollection is they would receive that portion of the revenue themselves, that went over their line. And wherever they connected with the Pacific Company outside the city of Everett, somewhere between Seattle and Everett, the—— I don't know if they get any proportion of the haul from there or not. I don't know about that.

Mr. Sharpe: As you understand it, the toll from Mt. Vernon to Portland would be the sum of the tolls over the West Coast lines and the Pacific lines, the total toll? Each company gets its particular toll on that call?

Mr. Rupp: I think so.

Mr. Sharpe: That would be true whichever way the message went?

Mr. Rupp: I think so.

Mr. Sharpe: That only occurs where the company owns part of the toll line?

Mr. Rupp: Yes, and that is an unusual situation.

Mr. Sharpe:

Q. Where the company owns a local exchange, it only receives a percentage of the outgoing call?

A. Yes, sir.

Q. And none of the incoming calls?

A. No, sir.

Mr. Sharpe: I wish to offer in evidence these two forms of contracts which, I imagine, are representative of the [fol. 158] contracts entered into between the Pacific Company and outside exchanges. The one between the Pacific Telephone and Telegraph Company and Howerton, doing business as the Ilwaco Company, and the Pacific Company and the Oregon-Washington Telephone Company.

[fol. 159] I will admit these are contracts of that date between Howerton and the Pacific Company and the Oregon-Washington and the Pacific Company.

(The Pacific Telephone and Telegraph Company connecting agreement with J. A. Howerton admitted in evidence and marked defendants' exhibit no. 20).

(Connecting agreement with Oregon-Washington Telephone Company admitted in evidence and marked defendant's exhibit no. 21.)

Mr. Sharpe:

Q. Now, if incoming calls on these foreign exchanges are collect, are collect calls, in that event, the incoming station receives part of the compensation, do they not?

A. I believe they do.

Q. Do you know what part? The same part as if they were a sending company?

A. No, I don't.

Q. These are more or less standard relations?

A. Always contractural relations between the two parties.

Q. You have these contractural relations with each of these one hundred two foreign exchanges in the state of Washington?

A. Yes, sir.

Q. Outside the state of Washington in the territory occupied by the Pacific Company, there are also a large [fol. 160] number of foreign exchanges?

A. Yes, sir.

Q. Referring to the territory outside of the state of Washington.

A. Yes, sir.

Q. There are several hundred?

A. No doubt.

Q. Do you know the number?

A. No, sir.

Q. Approximately?

A. No, sir.

Q. Now, referring to foreign exchanges, as exchanges that are independent, not of the Pacific Company, but of the Bell system in the whole United States, there would be several thousand of these foreign exchanges, would there not?

A. Undoubtedly.

Q. Now, so far as you know, are the operations of the Pacific Company with any of these foreign exchanges located outside of the state of Washington competitive or non-competetive, which?

A. I don't know of any competetive system on the Pacific Coast.

Q. Do you have any competetive system in territory served by the Bell system, so far as long distance is concerned?

A. Not of my own knowledge.

Q. Do you know of any, of any case as to any of these foreign exchanges, either within or outside the state of Washington where there is a duplication of service as be-
[fol. 161] tween the Pacific Company or the Bell system and the independent companies?

A. I do not, specifically.

Q. In each of those cases the long distance, the arrangement for handling long distance messages as between the foreign exchanges and the Bell system is handled by, as a result of a contract entered into between the Bell Company and the—(interrupted).

A. So far as the Pacific Company is concerned.

Q. It would be true of all of the Bell system?

A. I don't know.

Q. So far as the Pacific system is concerned, it would be true?

A. Yes, sir.

Q. What you have said of the relation between the exchange at Ellensburg and the Pacific Company and the transmission of toll messages between Ellensburg and the Pacific Company would apply equally to the transmission of toll messages between the Pacific Company and any one of these foreign exchanges, either within or without the State of Washington, would it not?

A. Yes, sir.

Q. Suppose, for some reason, the Pacific Company should elect—and the Ellensburg Company should get together, and the two companies should agree the Ellensburg Company should sell out all of its operating property to the Pacific Company and the Pacific Company would thereafter continue to furnish to Ellensburg the same service which it now furnishes, both local and long distance, that is, which the two companies now furnish jointly?

[fol. 162] A. In other words, the Ellensburg Company becomes a part of the Pacific Company?

Q. Yes. And all of the property of the Ellensburg Company is transferred to the Pacific Company, sold and de-

livered, and assume that the service, the same efficient service, is furnished by the Pacific Company after the consolidation as before, as was previously furnished by the two companies acting independently? How much additional property would the Pacific Company have to acquire in order to furnish the same service, efficient service?

A. How much additional property beyond what the Ellensburg Company now owns?

Q. In addition to what the two companies now own, how much would have to be acquired to furnish the same service?

A. I don't see that any.

Q. How much property which is now owned by the two companies independently, could be disposed of as a result of a merger?

A. Not any, that I know of.

Q. Suppose the Pacific Company came to the conclusion that the—that it didn't care to operate the Olympia exchange any more as a part of the Pacific Company's property but that it would dispose of the Olympia Company, so far as the furnishing of local service was concerned, and that thereafter the Olympia properties would be operated in the same manner as the Ellensburg properties now owned by some independent company, it would be perfectly possible for some independent company to buy of the Pacific [fol. 163] Company the properties used by it, principally used by the Olympia division?

A. The exchange properties, yes.

Q. And perfectly possible for that company to have the same operating agreements as the Ellensburg Company, that is, with the Pacific Company, would it not?

A. Yes, sir.

Q. How much; and assume, now, that a new company is organized and the new company takes over the Olympia exchange and thereafter Olympia to be operated in the same manner as the Ellensburg property is now operated. How much additional property would the two companies have to acquire in order to carry on the operation in the same manner the property is now being operated by the Pacific Company?

A. None whatever.

Q. How much property could the two companies dispose of, if any?

A. None, whatever.

Mr. Rupp: You are including in your question the fact the Interstate Commerce Commission would have to agree to the purchase or sale of property. We can't buy—(interrupted)

Mr. Sharpe: I—(interrupted)

Mr. Rupp: We can't buy or sell property unless they agree to it, and the independent company couldn't.

Mr. Sharpe: That is assuming the legal technicalities.

Q. That would be true of foreign exchanges such as Olympia that was now being operated by the Pacific Company, local exchange, would it not?

[fol. 164] A. I could speak for the state of Washington.

Q. For the state of Washington?

A. Yes.

Q. In other words, if the two companies were split, one using, one operating the local exchange and one operating, continuing to operate the balance of the system, you wouldn't have to acquire any more property and wouldn't sell any more in order to continue to function with the same degree of efficiency?

A. No.

Q. Now, suppose the Bell Telephone System, which is the parent company, we will say the American Telephone & Telegraph Company, with the consent of the Interstate Commerce Commission, elected to so operate thereafter, that one company, let us say, the Pacific Telephone and Telegraph Company, would thereafter handle all of the interstate business now handled by the Pacific Company and wouldn't handle any, that is all of the interstate business with the exception of that portion of that part of the interstate service handled by the local exchanges, you contend under the 282 decision that the exchange does contribute a part of the interstate service where it handles the message at one end?

A. Yes.

Q. Let's assume the American Telephone and Telegraph Company elect to have the Pacific Telephone and Telegraph Company handle only interstate business and all of the interstate business with the exception of that portion handled by the local exchange as held by the 282 U. S.

[fol. 165] A. The Pacific Company handles both now.

Q. Let's assume them, hereafter, to handle only interstate business, but all of it, with the exception of that part handled by the local exchanges.

A. What has the Bell system to do with that?

Q. Let's assume the Pacific Company thereafter is to assume only to operate only its interstate business and no other business.

A. All right.

Q. And it was to handle all the interstate business with the exception of that part handled by the local exchanges in connecting long distance calls.

A. All right.

Q. Let's suppose that some other company, say company B, was to handle all other, all the other business now handled by the Pacific Company in the state of Washington, that is possible?

A. No, sir, I don't think so.

Q. I mean it is conceivable, is it not? That——

A. Hypothetically. The premise you set up.

Q. Let's suppose that these companies are friendly and non-competetive. They would be, would they not, one handling the local business and one inter-state?

A. Yes, sir.

Q. And it is possible for each company to make joint user arrangements with the other company for use of its property for handling messages, one way and another?

A. I don't know as to that. It would be a very complicated joint user contract. I fail to see how you could unscramble the interstate and intrastate business. All are [fol. 166] carried on the same toll lines and wires, intrastate and interstate.

Q. One company could pay the other a reasonable charge for the use?

A. It would be a glorious time trying to figure up that charge.

Q. If it was necessary, it could be done, could it not? If each company in that case were perfectly friendly and willing to enter into joint user arrangements, each could use the property of the other, would they normally, under those circumstances, each duplicate the service of the other?

A. I would hate to be the company that took over the interstate business.

Q. Now, do you conceive, as a business man, that if the two companies undertook to perform that service, one the interstate and one the local, would they, as a matter of fact, as good business men, duplicate the exchanges?

A. I can't see any point in that fact.

Q. I am assuming that the condition exists.

A. The fact is, it is one company.

Q. In your complaint you have assumed you are surrendering all your local business and doing only an interstate business. I am assuming what you say you are assuming in your complaint. I want to know whether, under those circumstances, you think those two companies would duplicate all of their equipment, as good business men. I am assuming they are friendly and perfectly willing to enter into equitable contracts for the joint use of the two [fol. 167] companies of the same common property. Could it be done?

A. No such thing has even been done to my knowledge.

Q. I don't care whether it has been done. I want to know could it be done?

A. I don't know whether it could be done practically or economically or at all.

Q. If the company owning all of the lines necessary to handle the local business, all of the lines necessary to handle the local long distance, the intrastate long distance business, could that company—that company could handle, I think you testified yesterday, the messages transmitted, the interstate messages transmitted between the state of Washington and other points in other states. In other words, you testified the same lines between Vancouver, Washington, and Seattle, could not only handle simultaneously messages between Vancouver and Seattle, Vancouver and Olympia, and Chehalis and Seattle, and San Francisco.

A. Well, Mr. Sharpe, you are setting up to say the same property shall be in use. The only thing you saw above that is a hypothetical division of ownership of the property.

Q. No, say a joint user agreement, one company to pay to the other a certain revenue or rental for the use of that particular property in transmitting its messages.

A. One company owns the entire property and leases the rights to two other hypothetical companies? Certainly, the system would operate.

Q. And it could operate on, how much additional prop-
[fol. 168] erty would it have to acquire to operate that way?
A. None whatever.

Q. And it could operate and cover the two kinds of service with, the two forms, of service, with the same efficiency as now?

A. Not necessarily. You have three organizations operating the same property and there will be greater expense involved.

Q. Bookkeeping. But so far as equipment is concerned and operating property is concerned, there would be no reason for any duplication at all, would there?

A. No, sir.

Mr. Rupp: What is this, one of these "make-work plans" under the New Deal? You have three sets of general managers and counsels and so forth. If you have three companies, you have three sets of attorneys. Now, there is no use talking—(interrupted).

Mr. Sharpe: Well, perhaps the mortality table would help out after a while.

Mr. Rupp: I am afraid it is rather—

Mr. Sharpe:

Q. That could be all done if mutually agreeable to the two companies?

A. Yes, sir.

Q. Wouldn't it be economically sound for two companies, whether they were in any way affiliated or not, if such was the plan of procedure, one to handle only local and one only interstate business?

A. No, I don't think it would be an economical arrangement, not for the rate payer.

[fol. 169] Q. It would be more economical for the rate payer if you duplicated the equipment than for—(interrupted).

A. I didn't understand your question.

Q. Even as between two independent companies, proposing to do the identical thing I have suggested, one to operate locally only, the other to operate, handle only the interstate business, wouldn't it be the most economical thing for the two companies to do, for one to lease its property

to the other under a joint user arrangement, rather than to duplicate the service as between the two companies?

A. Naturally.

Q. As a matter of fact, where two companies are non-competitive, they never do duplicate their equipment, do they?

A. No.

Q. Now, the American Telephone and Telegraph Company own the lines between Seattle and the city limits of Chicago?

A. They own the line east from Seattle.

Q. To Chicago?

A. Yes.

Q. To the city limits?

A. I don't know as to that.

Q. In handling the lines, business from Seattle to Chicago, you use the lines of the Bell Company?

A. They connect with the Illinois Bell Company in Chicago and the Pacific in Seattle.

Q. What arrangements would be made for the payment of the service? What does the American Telephone Company [fol. 170] lease for the purpose of handling the message, lease the equipment of the Illinois Bell Company, or how would it be arranged?

A. You mean a call from Seattle to Chicago? We would use the facilities of the Illinois Bell Company in Chicago and the Bell system to Chicago.

Q. With a division of the tolls on the division lines?

A. Yes, a percentage.

Mr. Sharpe: Now, in order to get this thing categorically straight, I would like to read you my conception of the, my conception of the operations of the telephone and telegraph exchanges, both local and foreign, and ask you to state whether or not they are correct and in what respect, if incorrect, if it is agreeable to the Court. Of course, that is unusual, but this is a peculiar case in that it is rather technical and it is quite important to get a whole picture.

Mr. Rupp: I don't know how you will get anywhere that way. I will see if there is anything to do if he does that.

Mr. Sharpe:

Q. Now, I will ask you this, or I will make this statement, and ask you if it is correct: in areas of comparatively

dense populations, such as cities and towns, there are certain local exchange areas, that is local exchanges, established, are there not?

A. Yes, sir

Q. Those can be referred to as local exchange areas?

[fol. 171] A. Yes, sir.

Q. In those areas each customer is supplied at his residence or place of business with a telephone set consisting of a mouthpiece and transmitter?

A. He is furnished with a lot more than that, a desk stand, bell box and condenser and so forth.

Q. Into this mouthpiece, the individual using the service —we will call him the user—speaks, and he also has, the transmitter of the message, has a receiver from which the user of the apparatus receives oral messages. That is true?

A. Yes, sir.

Q. The location of the telephone sets are commonly referred to as stations, are they not?

A. Yes.

Mr. Rupp: No, a location.

A. The telephone station is a bell box——

Mr. Sharpe: What is a station?

A. The station is the telephone apparatus at the customer's residence or place of business.

Q. I say this telephone set is referred to commonly as a station?

A. Yes.

Q. Now, each telephone set is connected by one or more wires with a central office known as a local exchange?

A. Yes.

Q. At which telephonic connections are made between stations connected therewith by means of switchboards?

A. That is right.

Q. Made by the following process: each station is given [fol. 172] an arbitrary number?

A. Yes, sir.

Q. The customer wishing to converse with some other station, that is the calling customer, we will call him, establishes telephonic connection with the company's switchboard operator by removing the receiver from the hook?

A. Yes, sir.

Q. And informing such operator of the number of the station with which he wants connection established?

A. Yes, sir.

Q. Unless it is an automatic connection.

A. In which case he dials.

Q. The operator, by means of electric switches, forming a part of the switchboard—the operator then, by means of electric switches forming a part of such switchboard, establishes the connection desired and signals the customer at the desired station; that is, the called customer?

A. Yes, sir.

Q. When such connection has been made, by means of a signal, or buzzer with which each set is equipped?

A. That is true, yes.

Q. Such called customer then, by removing his receiver from its hook, establishes telephonic connections with such calling customer and receives the telephonic message by means of such a receiver, and communicates his message to the calling customer through the mouthpiece and transmitted forming part of his telephone set. That is all true? [fol. 173] A. That is right.

Q. In lieu of this, the aforesaid method of establishing connections between the calling customers and the called customers, certain local exchanges are equipped with automatic devices by which the services of the switchboard operator are partially or entirely dispensed with and the calling customer establishes connection with the called customer desired by dialing the number of the desired station on a device provided on the calling telephone set, which dialing process automatically establishes telephonic connection with such desired station, if the desired line is not already busy?

A. That is true.

Q. Otherwise, an automatic apparatus indicates to the sending customer, by distinctive signal, that such called line is already busy. Is that true?

A. Yes.

Q. In large communities, such as cities of the first class, the Pacific Company has established more than one exchange. That is true, is it not?

A. Yes.

Q. Each of which exchange is connected with all others by a large number of telephone wires known as trunk lines?

A. Inter-office trunks.

Q. In all such cases telephonic connections between stations connected directly with the same exchange are established directly through the switchboards of such exchange as above set forth?

A. That is true.

[fol. 174] Mr. Rupp: Of course, this is silly and I don't know to what extent the Court is going to take it into consideration.

A. It is mere detail.

Mr. Sharpe:

Q. Telephonic connections between stations connected with one telephone exchange and some station connected with some other local exchange is made through such trunk lines connecting such exchanges?

A. Yes.

Q. Several connections are accomplished either automatically or through the agency of switchboard operators?

A. That is true.

Q. The Pacific Company customarily—I mean the plaintiff, Pacific Telephone and Telegraph Company, of course. The Pacific Company customarily receives compensation for service so rendered to its customers by a monthly charge or rental made to each such customer?

A. That is true.

Q. Such monthly charge or rental does not include such service as long distance service?

A. Yes, it does.

Q. Monthly rental?

A. Yes, sir. It gives the subscriber access to the toll board as well as enables him to make connection with the exchange area. There is a toll charge in that rate.

Q. But for long distance service an additional charge is made?

A. The inter-exchange rate, yes.

[fol. 175] Q. A separate, additional charge is exacted?

A. From the toll board at one exchange to the toll board at the other exchange.

Q. With respect to long distance. Each local exchange in each local exchange area, where there is but one such local exchange, or the central exchange of such local exchange area, where there is more than one exchange serving such area, is also equipped with a long distance switchboard?

A. Toll switchboard.

Q. That is correct, it is connected with that kind of a switchboard?

A. Yes, sir.

Q. If there is more than one exchange, there is only one toll board?

A. Yes, sir. It may be in a separate building or in the main office down town, or it may be in line on the local board, or part of the local board.

Q. This is connected by telephone wires with the local switchboard in the local exchange or central exchange?

A. By toll switching trunks and toll recording trunks and so forth.

Q. Each switchboard is connected by one or more telephone wires with the long distance switchboards of all other local exchanges or central long distance exchanges as the case may be, operated by the Pacific Company or with which, by contract, such company has physical connections?

A. That is right.

Q. And whether within or without the state of Washington?

A. That is correct.

[fol. 176] Q. Any customer in any such local exchange area desiring to establish telephonic communication with a station in some other local exchange area, first establishes connection with the Pacific Company's operator at the long distance switchboard located in his local exchange or central exchange, as the case may be?

A. Yes, sir.

Q. And then indicates to the operator the individual or station with whom or with which long distance connection is desired?

A. You are leaving out a step. Generally speaking, that is the way it works. It may be a manual office. In the manual office, the subscriber gets the local operator and she puts the connection up to the toll operator, who takes down the details of the call. In the dial system, you dial long distance direct. It goes through the system the same.

Q. Such local long distance operator then establishes a connection with the long distance switchboard located in the local exchange area in which the desired customer or station is located?

A. Yes, sir.

Q. Whereupon, the operator of the latter long distance switchboard establishes the connection between the switchboard and the desired customer in his or her area, and the telephonic connection and resulting conversation ensues, is that correct?

A. Yes, sir.

Q. Now, pay stations. In addition to the telephonic sets supplied to its customers, as aforesaid, the Pacific Com-
[fol. 177] pany has stations established at convenient points, which are known as "pay stations," furnished with telephone sets by means of which any individual desiring to communicate by telephone with any stations maintained be the company or its connections, may, by putting a coin or coins in a box provided therefore, equal to the toll or charge demanded for so doing, establish connection with the station in the manner hereinbefore described, both local and long distance. Is that correct?

A. Yes, sir.

Q. Private wire service. Certain customers of the Pacific Company are supplied by such company and its connections with direct telephonic connection between telephone sets located in its local exchange areas and the same and other local exchange areas, either within or without the state of Washington?

A. That is correct.

Q. This service, and we will call it "leased wire service," is that a fair name?

A. Yes.

Q. Is supplied to such customers as newspapers, stock brokers, news agencies, and radio stations?

A. That is right.

Q. Customers receiving such leased wire service, in consideration of such rentals paid to the Pacific Company and its connecting systems, are provided with the exclusive use of such telephonic connection between the desired telephone sets, either for the entire time or for certain agreed portions of the day. Is that correct?

[fol. 178] A. That is correct.

Q. Besides ordinary telephonic service over such leased wires, certain of such leased wires are equipped with devices known as teletype machines. Is that true?

A. That is true.

Q. And these machines are similar in appearance and operation to ordinary typewriters?

A. That is right.

Q. And by means of these machines the sender of the message at these stations typewrites it on the teletype machine at his station whereupon by means of various electrical equipment at the sending station and one or more receiving stations on such leased wire, machines at the receiving station or stations reproduce the message on recording machines installed for such purpose at such receiving stations?

A. Yes, sir.

Q. In other words, they transmit the written message by wire?

A. Through several machines at the same time with the same operation, yes, sir.

(Whereupon a recess was taken for fifteen minutes. Upon reconvening, the following proceedings were had:)

Mr. Mastick (on stand).

Mr. Sharpe:

Q. We were speaking about the leased wire service.

A. Yes, sir.

Q. Now, other leased wires are used for the transmission of telegraph messages by means of ordinary telegraph [fol. 179] sending and receiving sets.

A. Yes, sir.

Q. And also transmission of photo service?

A. Yes, sir.

Q. You spoke yesterday about the same series of wires by phantom and carrier circuits, making it possible to transmit a certain number of telephonic messages.

A. Yes, sir.

Q. And a certain number of additional telegraphic messages.

A. Yes, sir.

Q. The telephoto service would cover the telegraph field, would it?

A. Not at all. There is no similarity in principle of the two things.

Q. In addition to being able to transmit the telephonic messages, a certain number, you are also able to transmit telephoto?

A. No, a telephoto circuit is one of the highest grades we know how to provide. The frequency is far beyond speech, and you have to have exclusive circuits exclusively prepared for telephoto service. It is difficult to do and very expensive.

Q. You have to have wires especially constructed for it?

A. Specially prepared and balanced equipment.

Q. Can they be used for any other telegraphic and telephonic service?

A. Not when it is being used for telephoto service.

Q. It can be used?

A. It can be used for telephone, but it means taking down [fol. 180] the balancing equipment and the telephoto equipment required.

Q. Multiple service over the same wires. The telephone wires connecting the long distance switchboards in the various local exchange service areas are so equipped and operated that they are capable of being used and are used for the rendition of many services at one and the same time?

A. Yes, sir.

Q. That is not including the telephotic service?

A. Yes, sir.

Q. This multiple simultaneous service is made possible by certain equipment utilizing different radio bands of electrical energy?

A. We do not use radio frequencies in any of our telephone operations. We use high frequencies, but below radio. They run from 10,000 cycles to 30,000 cycles. Radio starts far above that.

Q. But they are bands of electrical energy?

A. Yes, sir, that is correct.

Q. It being possible to transmit teletype and telephonic messages and telegraphic messages by the means of such bands over the same physical circuit at the same time?

A. Bands is not a technical way of expressing it. They are actually frequencies.

Q. Frequencies. But, as a result, you are enabled to transmit—(interrupted).

A. On a particular type of line, we superimpose certain bands of speech frequencies.

Q. As a result of this method, you are able to transmit [fol. 181] telephone messages, teletype messages, and telegraph messages on the same physical circuits at the same time?

A. That is true to the extent I testified yesterday.

Q. On a physical telephone circuit extending from the long distance switchboard in Seattle, through Chehalis, Castle Rock, Vancouver, Washington, Portland, Oregon, long distance telephone messages may be transmitted simultaneously between telephone sets in the Seattle exchange and telephone sets in the exchange areas of each of the other cities?

A. I pointed out yeserday of a telephone conversation from here to Vancouver, and over the same wire from here to San Francisco and from here to Los Angeles, depending on the type of circuits, how many can be superimposed on the circuit simultaneously without interference.

Q. And the long distance service, teletype service, and telegraphic service, may be and is handled over the same physical telephone circuit?

A. That is correct.

Q. Between the various stations through which the circuit passes?

A. Yes, sir.

Q. Or between the terminii of such circuits at one and the same time?

A. Yes, sir.

Q. And without the character of one service in any way interfering with the performance of the other service?

A. Yes, sir.

Q. While leasing the wire for the performance of service [fol. 182] of one kind, such as transmission of radio programs, telephonic service and telegraphic service, the company utilizes such wires for the performance of other service to the extent of the capacity of the radio bands of such circuits?

A. Of the different circuits.

Q. Of such circuit with the same effect and result as if each of said services were handled over separate wires?

A. Correct.

Q. In certain local exchange areas which the Pacific Company furnishes with long distance telephone service, the local exchange telephone equipment is owned and maintained and operated by corporation, partnerships, or individuals, other than the said Pacific Company. That is true?

A. Yes.

Q. This is true, for instance, with respect to the telephone exchange areas in which the cities of Spokane, Castle Rock and Everett are located, and many other local exchange areas?

A. Yes, sir.

Q. Such telephone exchange areas, as agreed, may be referred to as "foreign exchange areas".

A. Yes, sir.

Q. In nearly all of such exchange areas, the telephone service furnished by the owning company is wholly non-competitive with the telephone service furnished by the Pacific Company?

A. Yes, sir.

Q. I said "nearly all" and you said "in all". You don't [fol. 183] know of any case where it is competitive?

A. That is right.

Q. As to all long distance messages transmitted to and from stations in said foreign exchange areas and points reached by the Pacific Company's long distance service, the Pacific Company, by contract with such owning companies, utilizes the telephone equipment of such local companies in the transmission of such long distance messages to and from telephone stations in such foreign exchange areas for which said Pacific Company pays such other company an agreed service charge or division of the long distance tolls.

A. As we just discussed this morning.

Q. The same is true of leased wire service, is it? What is the arrangement with regard to leased wire service, a station, for instance, located in one of the foreign exchange areas and in the Pacific lines?

A. If we made the lease of the leased wire, we would have to pay the connecting company for their part of that leased service. That would probably be a matter of contractual relationship again.

Q. Should the said Pacific Company elect to cease to perform any of its intrastate business, telephone and tele-

graph business, in the state of Washington, and thereafter render long distance telephone service between points in Washington and points in other states, rendering the same service it now performs, it could, if it could procure a purchaser therefore, sell and convey to some other corporation desiring to carry on the intrastate local and long distance telephone service in Washington now conducted by said [fol. 184] Pacific Company, all of the operating property and equipment of said Pacific Company now used by said company in furnishing its present intrastate local and long distance telephone service, it could do it?

A. No.

Mr. Rupp: I object to that. It assumes the Pacific Company can elect to cease intrastate operations, which it cannot do.

Mr. Sharpe: I assume it can lawfully do so.

Mr. Rupp: How can you assume that when the law says we can't?

Mr. Sharpe: If it demands a constitutional amendment, assume it. We are considering the physical possibilities, not the legal possibilities.

Mr. Rupp: The ground of my objection is that you cannot put a question to a witness in which he is asked to assume what it is legally impossible to do. We are trying a case by which the State seeks to exact from us a certain portion of our money. Now, obviously, that case must be tried under the constitution as it is, under the law as it is, and under the facts as they exist, not under some other hypothesis that we are living in Turkey under another constitution with a different set of statutes and a different set of facts. On what conceivable theory is the Court enlightened by asking the witness to answer a question based on [fol. 185] an assumption wholly impossible as a matter of law?

[fol. 186] Another hypothesis in the case is that we were able to secure a purchaser for this property. Are we to determine whether or not the statute is valid by finding out whether or not, under another state of facts, that we were able to find a purchaser for property of somewhere around fifty or sixty million dollars in the year 1935, whether or not the tax now imposed on the company which is earning, according to the evidence before this court, about one and one half per cent on the actual amount of money invested

in it, and thus determine on that hypothesis if we can find a purchaser for a company with that kind of an earning, is valid. I say again, a question that contains that assumption [fol. 187] which, in my judgment, is just as impossible as that we can elect to abandon the intrastate service. I don't think, as a matter of fact, we could any more sell the intrastate portion of this property, if there is such a thing, than we could withdraw from the intrastate business as a matter of law. Nobody would buy it with its present earning and possibility of future earning as now conducted in the state of Washington.

Mr. Sharpe: In reply to counsel's objection, Your Honor, I want to call the Court's attention to the amount—(interrupted).

The Court: I think we will get along faster, and you may proceed. I am quite well convinced myself as to the law of the matter, and I might say right now that I think that the test you are getting at, that was suggested in that one case, might be appropriate probably under the condition the court was then considering, but I think we are going far afield with it now. But I think we will get along faster to let you develop your case in your own way.

Mr. Sharpe:

Q. Now, if the Pacific Company did elect to cease to perform intrastate local or long distance service, and elected thereafter to render only long distance, interstate long distance service, as it now performs, and if the company could [fol. 188] secure a purchaser for its property principally used for its local service or intrastate service, it could, of course, sell and convey that property to another company, could it not?

A. Yes, but it wouldn't be doing a solely interstate business that way, because the local exchange does an interstate business over those facilities.

The Court: You can't make a record all talking at the same time.

Mr. Sharpe:

Q. And of course, if the Pacific Company, having elected to handle only interstate service, did elect to sell its property to some other company, it could reserve the right to

use that property by a joint user arrangement for its interstate service, could it not?

A. I suppose, by a contractural arrangement, it might do that.

Q. And if it did, by a satisfactory arrangement, enter into that sort of contract with the purchasing company, it wouldn't be necessary then, to duplicate the actual equipment of the two companies, to increase the amount of the equipment of the two companies in handling the two classes of service?

A. No.

Q. And if it sold out one piece of property, say Olympia property, to one company and its Seattle property to another company, it could make the same joint user contracts with each of those companies, could it not?

A. Yes. But still on the hypotheses, I take it.

Q. Yes, on the same hypotheses. There are now in the United States a large number of telephone companies doing [fol. 189] a long distance telephone business between approximately 5,000 local exchange areas. You said many thousand, you wouldn't say five thousand? Would you say five thousand is about right?

A. I don't know.

Q. In which the local telephone service is supplied by local telephone companies other than the company or companies doing the long distance business. There is a large number of them, thousands, you say, throughout the country?

A. Yes, sir.

Q. In none of these do such long distance companies maintain separate equipment for long distance only?

A. I don't understand the question.

Q. In none of those companies where these long distance —you say there is thousands of local exchange areas in which the exchange is owned by companies independent of those handling the long distance service?

A. Yes, sir.

Q. So far as you know, in none of those areas does the long distance company handling the long distance messages, maintain separate equipment for long distance use only?

A. That is right.

Q. But in such cases the long distance companies utilize,

by joint user agreements, the facilities of such local telephone companies in handling the long distance service?

A. Yes, sir. A long distance company may own the toll switchboard or the connecting company may. The long dis-
[fol. 190] tance company may supply the toll operators to operate the board. Those things vary in different cases.

Q. The location of the telephone wires is either overhead wires on the streets, and the only place where you—I will just state it, the telephone wires, by means of which the Pacific Company carries on its intrastate and interstate telephone service in the state of Washington are, except where leading into private property where telephone service is rendered or into the exchanges of said companies, either suspended on poles set in the public streets, roads, highways, and alleys of the state of Washington, or carried in underground conduits located in such public streets, roads, highways and alleys and I might add, also in certain cases, over easements owned by your company?

A. Right. We may use any one of three types of construction on toll lines; wires supported by poles, aerial wires supported by poles, wires in cables supported by poles, or wires in cables in underground conduits.

Q. And located on the highways or private rights of way?

A. Yes, sir.

Q. With respect to the Home Company, I mean the Home Telephone and Telegraph Company of Spokane, one of the plaintiffs in this case; this company, during the year 1933, and for many years prior thereto, operated its various telephone properties in the same manner as the Pacific carried on its local exchange business?

A. If you limit it to local exchange service, yes.

Q. Said Home Company had had and now has no operat-
[fol. 191] ing property in any state other than Washington?

A. That is right.

Q. It does no interstate business except that it receives from the Pacific Company and other interstate telephone companies, a certain proportion of the tolls received from the transmission of long distance interstate telephone messages originating or terminating at the telephone stations forming a part of its local exchanges as compensation for the use of its property in the transmission and receipt of such interstate toll messages and rental from leased wires?

A. I can't agree to that. They do an interstate toll business, have a toll plant in the city of Spokane and do business over that property that they own. True, only to the city limits of Spokane and the Spokane exchange boundary. In that area they render an interstate business.

Q. Render a part of the interstate business?

A. Yes, sir.

Q. To the extent of owning the line equipment?

A. And they also own the toll plant in the city of Spokane.

Q. Otherwise, that statement is correct that I made?

A. Well, I don't know.

Q. That is—(interrupted).

A. I lost track of the whole question.

Q. It does no interstate business, has no toll lines?

A. Yes, it has.

Q. I mean outside of the city.

A. Not outside of the city of Spokane; within the city it has.

[fol. 192] Q. That connects with the Pacific Company's toll lines?

A. Yes, sir.

Q. The only interstate business it does is to assist in handling the interstate long distance messages which are transmitted from the city boundaries of Spokane to some point out of the state?

A. It connects with the Pacific Company at the exchange boundary.

Q. Do you attend these rate hearings, all the rate hearings that have been had before the Department of Public Works of the State, instituted by either the Home Company or the Pacific Company during the last two or three years?

A. I never attended any of them.

Mr. Sharpe: That is all.

Redirect examination.

By Mr. Rupp:

Q. I think one matter needs to be cleared up. What is the purpose of crediting to the exchange a percentage of toll revenue?

A. Whenever an exchange handles a toll call or handles toll business, whether the toll business is interstate or in-

trastate, the exchange is put to some expense and they have to use certain exchange property in completing that call. Now, we have determined that that expense, that is, over a long period of years, amounts to about twenty percent of [fol. 193] the originating toll of that particular exchange, both interstate and intrastate. Now, we might—we credit that exchange with twenty percent of those originating tolls and care for the expense they are put to in handling both incoming and outgoing toll business over their property. The Pacific Company might as well charge to toll expense as to credit toll revenue to the exchanges, but we credit the toll revenue to the exchange so we know what the exchange properties are doing and what the toll properties are doing separately.

Q. If you wanted to find whether or not the Olympia exchange was experiencing a fair return on the fair value of that property, you would have to take into consideration the twenty percent credited to that exchange to take care of the toll functions that exchange performs.

A. Yes.

Q. And in the annual report to the Department furnished by the company each year, is there set out in dollars the twenty percent credited to the exchange?

A. Yes, sir, there is.

Q. Will you show His Honor where that is set forth?

A. That is account 310, particularly for the Aberdeen exchange on one of the insert to the annual report for the year 1933, message tolls, line 9, $9,575.05 is the amount credited to that exchange. It is twenty percent of the originating toll business of that exchange. Likewise, for Bellingham, the amount is $8,486.40. That represents twenty percent of the tolls originating at the Bellingham [fol. 194] exchange and we have set forth all of the principal exchanges, one by one, and those under a certain number of stations are found under what is termed remaining exchanges. These are the remaining exchanges and to those the amount of $66,225.72 was credited, representing twenty percent of all of the originating tolls originated by all of these remaining exchanges. We set forth separately on the next statement, the message tolls developed from toll line and that represents approximately 80% of the total toll message revenue, the remaining 20% being in here. If the toll revenues credited to these exchanges are added

to that figure, you get the total toll revenues reported by the Pacific Company in the state of Washington, $2,163,387.23.

Q. Now, what percentage—that 20% was credited to the exchange in the year 1933?

A. Yes, sir.

Q. Does the accounting circular provide, or in substance state, that the Interstate Commerce Commission consents and approves of that method of crediting to the exchanges?

A. Yes, sir, it does.

Q. You said this morning something about the Interstate Commerce Commission having jurisdiction. You meant now, the Federal Communications Commission has jurisdiction, the I. C. C. having no further jurisdiction. Now, what is the situation as to the Home Company with reference to this credit?

A. The same is true of the Home Company. They are credited with 20% of the originating toll revenues from the Spokane exchange.

[fol. 195] Q. Is the physical and operating situation, so far as payment of operators, the same in the Home Company as it is with reference to the exchanges of the Pacific Company?

A. No, it is not —. In the Pacific Company exchanges the Pacific Company toll is charged with the toll operator's expense and the Home Company is also; that is, the Pacific Company pays the toll operators' expense for the Home Company as well as for all of their own exchanges.

Q. What is paid to the connecting companies other than the Home Company?

A. As a rule, thirty percent.

Q. Why do they get thirty percent when the Home Company gets twenty percent and the exchanges of the Pacific Company are only credited with twenty percent?

A. In those cases, they own the toll switchboards as a general rule, and pay the toll operators' wages.

Q. Now, does this twenty percent credited to the exchanges of the Pacific Company, the twenty percent paid to the Home Company and the thirty percent generally paid to the connecting companies include interstate as well as intrastate revenue?

A. Yes, it does.

Q. During—I think there may be possibly some confusion with reference to some testimony of yesterday. In the case of a call from Seattle to San Francisco, the state of Washington, as you have testified, receives a portion of the revenue derived from that call, based upon the length of wire haul in the state of Washington as compared to the [fol. 196] total wire haul?

A. Yes, sir.

Q. Suppose the message originates in San Francisco and comes to the state of Washington, does the state of Washington receive anything from that message?

A. Yes, sir, it gets the same mileage haul.

Q. And that amount of money is in the figure shown in the annual report under message tolls?

A. Yes, sir.

Q. Now, what connection has this compensation to exchanges, or the payment made to connecting companies, with the separation of property, revenues and expenses shown in your exhibits 11 and 12, which relate to the Pacific Company and 13 and 14, which relate to the Home Company?

Mr. Sharpe: I object to that as calling for a conclusion. It is for the Court to determine from the evidence and not for this witness to draw his conclusion of it.

The Court: He may answer.

A. None whatever.

Mr. Rupp:

Q. Why not?

A. Because the 20% compensation is based on both interstate and intrastate tolls. In the interstate—intrastate segregation, we were trying to find out what proportion of the total gross revenues were interstate and what proportion of the total interstate-intrastate expenses were interstate, and what proportion of the property.

Q. How many interstate telephone messages were there in 1932, if you recall?

[fol. 197] A. Six hundred thirty-seven odd thousand.

Mr. Rupp: I offer in evidence, if Your Honor please, a letter from the Tax Commission of the state of Washing-

ton dated May 29, 1934, addressed to our firm and reply thereto dated June 29, 1934. The letter is without signature. I don't recall whether I signed the firm name or my own to it, but I wrote the letter and the return made in compliance with this demand of May 29th, 1934, of the Pacific Company for the months of August, September, October, November and December, 1933 and the return for the like period made by the Home Company.

The Court: They may be admitted.

(Letter of May 29, 1934, from Tax Commission, together with reply letter of June 29, 1934, and business tax return statement, admitted in evidence and marked plaintiff's exhibit no. 22.)

Mr. Rupp: I may say, Mr. Sharpe, I wrote a like letter for the Home Company and I may add further that a letter identical with the exception of the change of dates has been written to the Tax Commission each month as these returns have been filed.

[fol. 198] Recross-examination.

Mr. Sharpe: I might ask Mr. Mastick one question.

Q. What is your opinion, Mr. Mastick, as to whether or not, should the Pacific Company withdraw from this local telephone exchange service in the state of Washington, whether other companies or other individuals or other partnerships would undertake the furnishing of a local service to the communities. Is there—in other words, would there be an insistent demand for local telephone service in such communities as Olympia and other cities of the state?

A. Do you mean to ask me whether the public would put up with no telephone service?

Q. With no local telephone service.

A. I don't think they would for a minute.

Q. Some company or organization would furnish service to these communities?

A. Undoubtedly they would get—(interrupted).

Q. Or the cities themselves would furnish the service?

A. They might.

Mr. Rupp: They can't under the law.

Mr. Sharpe: I don't know what law you are speaking of.

Mr. Rupp: The statute of the state. There is no provision in this state for the city to go in the telephone business. It couldn't if it had the money and wanted to. They can't go butting into anything because they want to. They have to have the authority to do it.

Mr. Sharpe: Give them the authority.

Mr. Rupp: I am not speculating on what the Legislature is doing.

[fol. 199] Mr. Rupp: I rest.

(Witness excused.)

Mr. Otto B. Rupp, being a witness called on behalf of the defendants, after having first been duly sworn, testified as follows:

Direct Examination.

By Mr. Sharpe:

Q. Mr. Rupp, will you state—you are attorney for the Pacific Telephone and Telegraph Company?

A. I am a member of a firm which is attorney for the Pacific Telephone and Telegraph Company.

Q. You have been for a number of years heretobefore?

A. The firm has been attorney for the Pacific Telephone and Telegraph Company since some time prior to 1909. How long before that, I don't know.

Q. How long have you been associated with the firm that represents it in the state?

A. Since May, 1909.

Q. That is true, also, of the Home Company?

A. No.

Q. How long has your firm represented the Home Company?

A. We do not ordinarily represent the Home Company.

Q. You do represent them in this suit?

A. In this suit, yes.

Q. Have you represented them in all matters connected [fol. 200] with the occupational *eax*.

A. No.

Q. Who represented them?

A. The firm of Post, Russell, Payne and Davis, I think it is.

Mr. Schweppe: I don't think you caught the quesion. We have represented the Home Company in connection with the 1933 occupational tax.

A. I thought he meant the Spokane tax.

Mr. Sharpe:

Q. Your firm has represented the Home Company in matters connected with the occupational tax?

A. State occupational tax, surely.

Q. Do you know, Mr. Rupp, what efforts have been made by the Pacific Telephone and Telegraph Company before any state regulatory body or any Federal regulatory body, looking toward an increase of rates by reason of the enactment of the state occupational tax by chapter 191, laws of 1933?

A. Neither the Pacific Telephone and Telegraph Company nor the Home Telephone Company of Spokane has applied for an increase in telephone rates, telegraph rates or program supply rates to the Department of Public Works of the state of Washington, the Interstate Commerce Commission, or the Federal Communications Commission. Of course, interstate telephone and telegraph—interstate teletype rates or program supply, are not under the jurisdiction of the state of Washington. They have not made application to either Federal body having jurisdiction in that regard.

[fol. 201] Q. By reason of the occupational tax?

A. We haven't paid any.

Q. By reason of the enactment of the occupational tax law?

A. They have made no application for an increase since the enactment of that statute.

(Witness excused.)

Mr. Sharpe: The State rests, Your Honor, the defense.

[fol. 202] ORDER SETTLING STATEMENT OF FACTS

STATE OF WASHINGTON,
County of Thurston, ss:

On this 28th day of March, A. D. 1935, pursuant to due notice of application for settlement and certification of the statement of facts in the foregoing entitled action, the parties of said actions, appearing by their respective attorneys of record herein, the undersigned, Honorable D. F. Wright, Judge of said court, presiding at the trial of said action, now hereby settles the annexed and foregoing statement of facts as the Statement of Facts in said action and hereby certifies:

That the matters and proceedings embodied in the annexed and foregoing statement of facts, exhibits and other written evidence introduced and offered in evidence upon the trial of said action, and filed in the same causes and now marked and identified by me as follows: Plaintiff's exhibits numbers 1 to 18, inclusive, and number 22; and Defendants' exhibits numbers 19, 20 and 21; referred to and identified in the foregoing proposed statement of facts, are matters and proceedings occurring in said cause, and the same are hereby made a part of the record therein; and that the same contain all the testimony on which said cause was tried; evidence produced or offered by either of the parties to said action, together with all of the objections and exceptions of counsel taken to the reception or rejection of testimony, and the rulings of the Court therein, all documents and instruments in writing introduced or offered in evidence, and all the material facts, matters and proceedings heretofore occurring in said causes, and not already a part therein; and the Clerk is hereby ordered to attach to the said statement all of the original exhibits on file in said cause as herein identified and which the clerk of this court is ordered to transmit to the Clerk of the Supreme Court.

Done in open court this 28 day of March A. D. 1935.

D. F. Wright, Judge.

O. K. —— ——, —— ——, Attorneys for ——.

[File endorsement omitted.]

[fol. 203] It is hereby agreed that the foregoing statement of facts is correct; that plaintiffs have no amendments thereto; and that the trial Judge may sign the Certificate attached to the foregoing statement of facts without any notice to us.

McMicken, Ramsey, Rupp & Schweppe, attorneys for Plaintiffs. S. W. Hamilton, & R. G. Sharpe, Attys. for Defendants.

March 21, 1935

[fol. 204]

PLAINTIFF'S EXHIBIT No. 1

Thurston County Cause No. 15282-87

Date Admitted: Jan. 10, 1935

No. 15282

The Pacific Telephone and Telegraph Company

Amount on Books for Plant, Equipment and Working Assets

Total—State of Washington

Year	Net Addition to Plant and Equipment Each Year	Average Working Assets Each Year	Total End of Year	Average for Each Year
1922	$4,389,063	$960,716	$29,980,436	$27,785,904
1923	4,194,434	1,153,661	34,367,815	32,270,598
1924	2,057,812	1,159,178	36,431,144	35,402,238
1925	1,613,780	1,225,528	38,111,274	37,304,384
1926	3,038,881	1,334,036	41,258,663	39,739,222
1927	1,512,420	1,278,847	42,715,894	41,959,684
1928	3,063,515	1,407,458	45,908,020	44,376,262
1929	6,616,248	1,746,744	52,863,554	49,555,430
1930	4,081,341	2,029,215	57,227,366	55,186,695
1931	1,216,941	1,511,122	57,926,214	57,317,743
1932	246,275	1,475,115	58,136,482	58,013,344
1-1-1933*	84,029	.....	58,220,511	.....
1933	635,155†	1,565,594	57,675,835	57,993,413

* Reclassification of accounts.
† Red in copy.

[fol. 205] PLAINTIFF'S EXHIBIT No. 5

Thurston County Cause 15282-87

Date Admitted: Jan. 10, 1935

The Pacific Telephone and Telegraph Company

Decision on rate base in Case 5344, brought down to end of and average for each year, 1922—December 31, 1933, inclusive

Total—State of Washington

Commission Decision, June 30, 1922..... $28,216,854

Year	Net Additions to Plant and Equipment Each Year	Average Working Assets Each Year	Decision Brought Down to End of Each Year	Average for Each Year
1922*	$1,116,896	$960,716	$29,281,344	$28,216,854
1923	4,194,434	1,153,661	33,668,723	31,571,506
1924	2,057,812	1,159,178	35,732,052	34,703,146
1925	1,613,780	1,225,528	37,412,182	36,605,292
1926	3,038,881	1,334,036	40,559,571	39,040,130
1927	1,512,420	1,278,847	42,016,802	41,260,592
1928	3,063,515	1,407,458	45,208,928	43,677,170
1929	6,616,248	1,746,744	52,164,462	48,856,338
1930	4,081,341	2,029,215	56,528,274	54,487,603
1931	1,216,941	1,511,122	57,227,122	56,618,651
1932	246,275	1,475,115	57,437,390	57,314,252
1-1-1933**	84,029	.....	57,521,419	.....
1935	635,155†	1,565,594	56,976,743	57,294,321

* Net additions for the year 1922 are for the last six months only.
**Reclassification of accounts.
† Red in copy.

[fol. 206] PLAINTIFF'S EXHIBIT No. 6

Thurston County Cause 15282-87

Date Admitted: Jan. 10, 1935

The Pacific Telephone and Telegraph Company

Actual Performance Appraisal as of December 31, 1914, Brought Down to end of and Average for Each Year, 1915—December 31, 1933, Inclusive

Total—State of Washington

Actual performance appraisal as of December 31, 1914 excluding Spokane Exchange..... $16,151,055

Year	Net additions to plant and equipment each year	Average working assets each year	Actual performance appraisal brought down to end of each year	Average for each year
1915.....	$345,962	$601,169	$16,480,001	$16,307,020
1916.....	416,014†	453,875	15,916,693	16,124,700
1917.....	518,652	521,998	16,503,468	16,244,142
1918.....	367,749	656,204	17,005,423	16,821,548
1919.....	958,021	865,027	18,172,267	17,693,256
1920.....	1,952,389	859,853	20,119,482	19,143,287
1921.....	4,660,520	905,017	24,825,166	22,494,906
1922.....	4,389,063	960,716	29,269,928	27,075,396
1923.....	4,194,434	1,153,661	33,657,307	31,560,090
1924.....	2,057,812	1,159,178	35,720,636	34,691,730
1925.....	1,613,780	1,225,528	37,400,766	36,593,876
1926.....	3,038,881	1,334,036	40,548,155	39,028,714
1927.....	1,512,420	1,278,847	42,005,386	41,249,176
1928.....	3,063,515	1,407,458	45,197,512	43,665,754
1929.....	6,616,248	1,746,744	52,153,046	48,844,922
1930.....	4,081,341	2,029,215	56,516,858	54,476,187
1931.....	1,216,941	1,511,122	57,215,706	56,607,235
1932.....	246,275	1,475,115	57,425,974	57,302,836
1-1-1933*.....	84,029	.....	57,510,003	.....
1933.....	635,155†	1,565,594	56,965,327	57,282,905

* Reclassification of accounts.
† Red in copy.

[fol. 207]

PLAINTIFF'S EXHIBIT No. 11

Thurston County Cause No. 15282-87

Date Admitted: Jan. 10, 1935

The Pacific Telephone and Telegraph Company

State of Washington

Year 1932 Operations

	Telephone and telegraph services		
	Intrastate	Interstate	Total
(a) Gross operating revenues	$10,333,428.97	$1,123,536.49	$11,456,965.46
(b) Licensee revenue — Dr.	150,518.54†	10,658.06†	161,176.60†
(c) Total operating revenues	$10,182,910.43	$1,112,878.43	$11,295,788.86
(d) Total operating expenses	7,512,247.46	701,049.80	8,213,297.26
(e) Net revenue from operations	$2,670,662.97	$411,828.63	$3,082,491.60
(f) Taxes (actual 1932)	1,373,085.20	137,456.19	1,510,541.39
(g) Operating income	$1,297,577.77	$274,372.44	$1,571,950.21
(h) Amount on books for plant, equipment & working assets — average year 1932	$51,050,988.98	$6,962,355.51	$58,013,344.49
(i) Ratio operating income to books	2.54%	3.94%	2.71%
(j) Commission decision 5344 brought down to Dec. 31, 1932— average year 1932	$50,435,796.68	$6,878,455.32	$57,314,252.00
(k) Ratio operating income to commission dec.	2.57%	3.99%	2.74%
(l) Actual performance appraisal — Average year 1932	$50,425,750.74	$6,877,085.26	$57,302,836.00
(m) Ratio operating income to actual performance appraisal	2.57%	3.99%	2.74%

† Red in copy.

[fol. 208] PLAINTIFF'S EXHIBIT No. 12

Thurston County Cause No. 15282-87

Date Admitted: Jan. 10, 1935

The Pacific Telephone and Telegraph Company

State of Washington

Year 1933 Operations

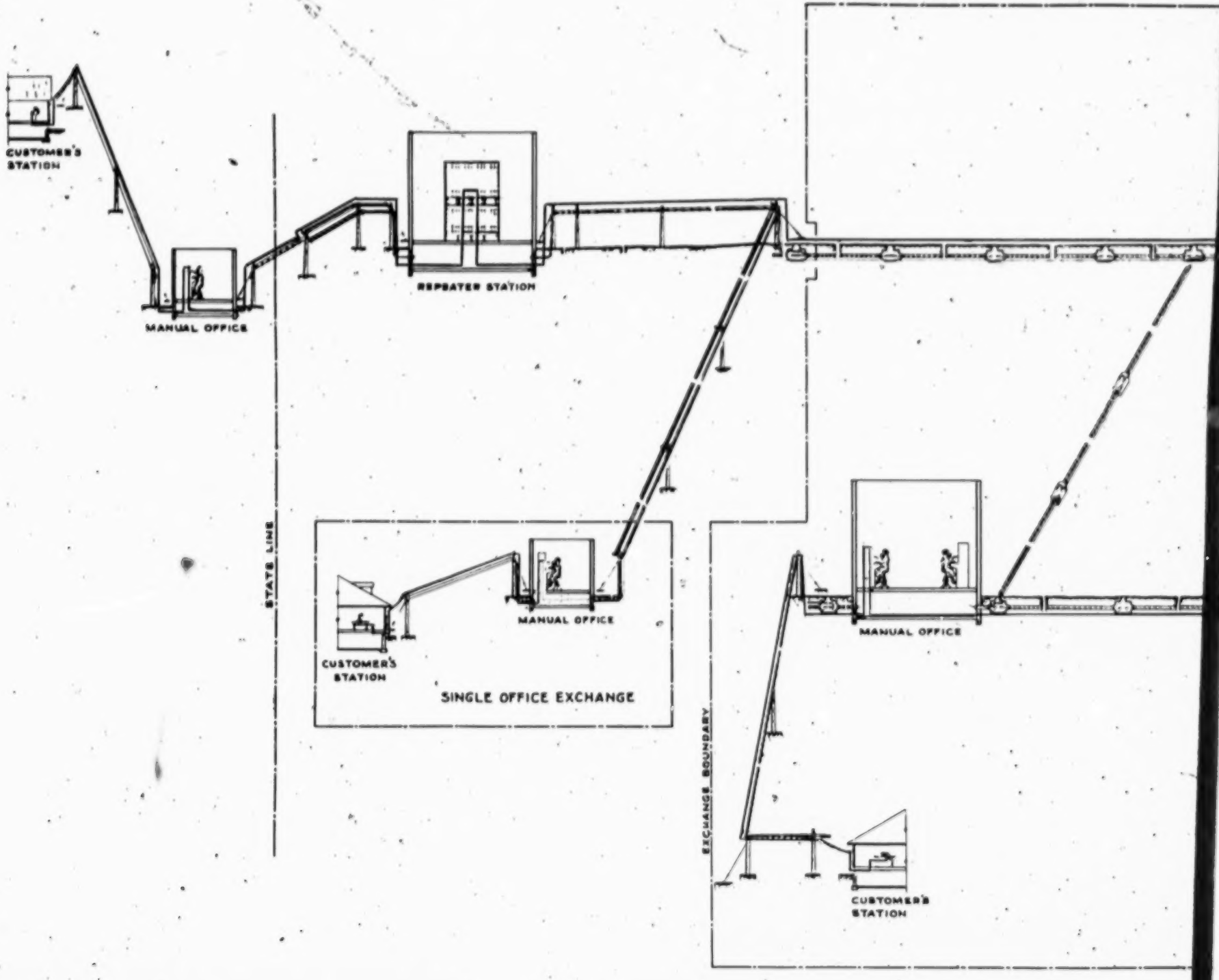
	Telephone and telegraph services.		
	Intrastate	Interstate	Total
(a) Gross operating revenues	$9,317,598.94	$932,424.74	$10,250,023.68
(b) Uncollectible operating revenues*	86,725.36†	9,004.11†	95,729.47†
(c) Total operating revenues	$9,230,873.58	$923,420.63	$10,154,294.21
(d) Total operating expenses	$7,009,241.85	$640,692.04	$7,649,933.89
(e) Net revenues from operations	$2,221,631.73	$282,728.59	$2,504,360.32
(f) Taxes (actual 1933)	$1,440,293.29	$164,502.85	$1,604,796.14
(g) Operating income	$781,338.44	$118,225.74	$899,564.18
(h) Amount on books for plant, equipment & working assets — average year 1933	$51,033,449.19	$6,959,963.43	$57,993,412.62
(i) Ratio of operating income to books	1.53%	1.70%	1.55%
(j) Commission decision 5344 brought down to Dec. 31, 1933— average year 1933	$50,418,257.65	$6,876,063.35	$57,294,321.00
(k) Ratio of operating income to commission dec.	1.55%	1.72%	1.57%
(l) Actual performance appraisal — Average year 1933	$50,408,211.72	$6,874,693.28	$57,282.905.00
(m) Ratio of operating income to actual performance appraisal	1.55%	1.72%	1.57%

* Actual net losses for year 1933.

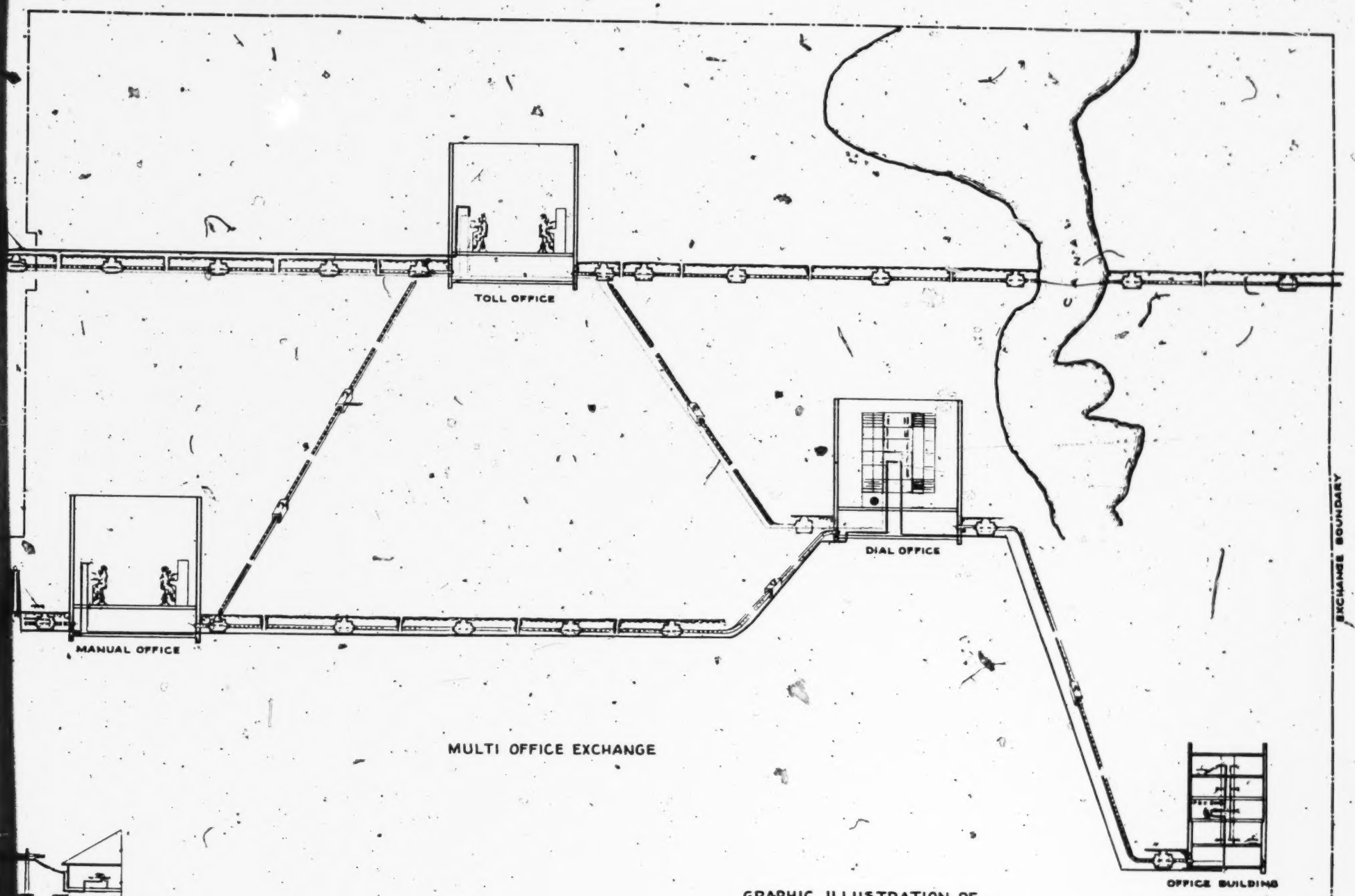
† Red in copy.

(Here follows 1 drawing, folio 209.)

Plaintiff's Exhibit No.15,
Thurston County Cause No. 15
Date Admitted Jan 10-1935.



Plaintiff's Exhibit No.15,
Thurston County Cause No. 15282-87
Date Admitted Jan 10-1935.



GRAPHIC ILLUSTRATION OF
THE USE OF TELEPHONE PLANT
FOR A LOCAL CALL
AN INTRASTATE TOLL CALL
AND

[fol. 210] PLAINTIFF'S EXHIBIT No. 16

Thurston County Cause No. 15282-87

Date Admitted: Jan. 10, 1935

The Pacific Telephone and Telegraph Company

State of Washington

Subscribers Loops and Supporting Structures—Book Cost

Class of plant	Total cost	Jointly used
Right-of-way—Exchange	$27,783	$27,714
Right-of-way—Toll	3,587	3,519
Exchange pole lines	2,677,688	2,674,411
Exchange aerial cable	3,769,789	3,768,018
Exchange Aerial wire	890,935	888,277
Exchange drop wire	799,768	799,768
Exchange U. G. Conduit	2,224,407	1,897,404
Exchange U. G. cable	3,342,331	2,688,997
Exchange submarine cable	74,153	56,890
Toll pole lines	207,839	207,507
Toll aerial cable	4,064	3,465
Toll aerial wire	11,314	11,314
Toll U. G. Conduit	26,657	25,625
Toll U. G. cable	99,219	49,733
Toll submarine cable	9,681	5,435
Total	$14,169,215	$13,108,077
		92.51%

[fol. 211] The Pacific Telephone and Telegraph Company

State of Washington

Station Equipment—Exchange—Book Cost (Excludes Telegraph and Toll Stations)

Class of plant	Total cost	Jointly used
Station apparatus	$2,756,991	$2,677,724
Station installations	1,317,905	1,283,122
Interior block wires	46,279	46,279
Private branch exchanges	1,337,249	1,109,631
Intercom. systems	311,693	311,693
Booths and special fittings	120,322	120,322
Total	$5,890,439	$5,548,771
		94.20%

Station Equipment—Toll Stations

	Total cost	Jointly used
Station apparatus	$81,888	$81,888
Station installations	38,691	38,691
Interior block wire	1,343	1,348
Private branch exchanges	32,312	32,312
Intercom. systems	9,078	9,078
Booths & special fittings	8,752	8,752
Total	$172,069	$172,069
		100.00%

[fol. 212] The Pacific Telephone and Telegraph Company

State of Washington

Subscribers' Switchboards—Book Cost (Including Land and Buildings)

Class of plant	Total cost	Jointly used
Central office equipment, manual	$2,691,146	$2,199,637
Central office equipment, Step-by-step	252,423	237,254
Central office equipment, panel	7,027,420	6,199,881
Other equipment of central offices	162,283	162,283
Land—Exchange	662,648	622,509
Buildings—Exchange	3,458,546	3,174,832
Total	$14,254,466	$12,596,396
		88.37%

[fol. 213]

The Pacific Telephone and Telegraph Company

State of Washington

Inter-Office Trunks, Including Associated Equipment such as Jacks, Plugs, Relays, Etc. (Private Local Lines)

Class of Plant	Local Use Exclusively
Exchange Pole Lines	$3,277
Exchange Aerial Cable	1,771
Exchange Aerial Wire	2,658
Exchange U. G. Conduit	327,003
Exchange U. G. Cable	653,334
Exchange Submarine Cable	17,263
Exchange Right-of-way	69
Total Outside Plant	$1,005,375

Outgoing Trunk Jacks and Dial Equipment Associated with Inter-Office Trunks, and Private Line Services

Class of Plant	Local Use Exclusively
Central Office Equipment, Manual	$491,499
Central Office Equipment, Step-by-Step	15,169
Central Office Equipment, Panel	827,539
Total Inside Plant (Jacks and Associated Equipment)	$1,334,207
Total	$2,339,582

[fol. 214]

The Pacific Telephone and Telegraph Company

State of Washington

Toll Trunks-Book Cost

Class of Plant	Total Cost	
Toll Switching Trunks	$98,348	
Toll Recording Trunks	10,841	
C. L. R. Trunks	29,725	
Total	$138,914	
	100.00%	Jointly Used
A-B Toll Trunks	$19,039	
	100.00%	Exclusively either Interstate or Intrastate.

[fol. 215]

The Pacific Telephone and Telegraph Company

State of Washington

Toll Switchboards Including Toll Use of Local Exchange Switchboards, Land and Buildings

Class of Plant	Total Cost
Land—Exchange	$338,903
Land—Toll	4,637
Buildings—Exchange	1,421,946
Buildings—Toll	28,455
Central Office Equipment, Manual	496,628
Central Office Equipment, Step-by-Step	23,742
Central Office Equipment, Panel Dial	310,501
Central Office Equipment, Toll & Tandem	1,280,795
Central Office Equipment, Other	47,935
Total	$3,953,542

Above Plant 100% Jointly Used

[fol. 216] The Pacific Telephone and Telegraph Company

State of Washington

Toll Lines (Including Supporting Structures but Excluding Long Lines Equipment)

Class of plant	Total cost	Jointly used
Right-of-way, exchange	$ 984	$ 984
Right-of-way, toll	312,703	312,703
Exchange pole lines	114,423	114,423
Exchange aerial cable	130,294	130,294
Exchange aerial wire	41,218	41,218
Exchange drop wire	24,413	24,413
Exchange U. G. conduit	390,968	390,968
Exchange U. G. cable	217,694	217,694
Exchange submarine cable	15,015	15,015
Toll pole lines	3,657,934	3,657,934
Toll aerial cable	684,003	684,003
Toll aerial wire	3,297,270	3,297,270
Toll U. G. conduit	478,902	478,902
Toll U. G. cable	741,694	741,694
Toll submarine cable	241,250	241,250
Total	$10,348,765	$10,348,765
		100.00% Jointly Used

[fol. 217] The Pacific Telephone and Telegraph Company

State of Washington

Long Lines

Class of plant	Total cost	Jointly used
Long lines	$826.109	$826,109
		100.00% Jointly Used

[fol. 218] The Pacific Telephone and Telegraph Company

State of Washington

Telegraph and Other Services

Class of plant	Total cost	Jointly used
Telegraph	$1,064,221	$1,064,221
Program	602,488	Interstate 100%
American Telephone and Telegraph Company leased plant	243,425	Interstate 100%
Clarkston, Washington	89,363	Interstate 100%
Total	$1,999,497	

[fol. 219] PLAINTIFF'S EXHIBIT No. 17

Thurston County Cause No. 15282-87

Date Admitted: Jan. 10, 1935

The Pacific Telephone and Telegraph Company

State of Washington

Summary of Jointly Used Property

Class of plant	Total cost	Jointly used
1. Subscribers' loops	$14,169,215	$13,108,077
2. Station equipment (Local)	5,890,439	5,548,771
3. Station equipment (Toll)	172,069	172,069
4. Subscribers' switchboards	14,254,466	12,596,396
5. Inter-office trunks	2,339,582	.....
6. Toll switchboards	3,953,542	3,953,542
7. Toll lines	10,348,765	10,348,765
8. Long lines	826,109	826,109
9. Telegraph	1,064,221	1,064,221
10. Program supply	602,488	.....
11. Leased plant to A. T. & T. Co	243,425	.....
12. Clarkston, Washington	89,363	.....
Total	$53,972,723	$47,756,864

88.48% Jointly Used

[fol. 220] DEFENDANT'S EXHIBIT No. 19

(3 Sheets)

S1454 W.

Letterhead of the Pacific Telephone and Telegraph Company Washington and Idaho Area

Defendant's Exhibit No. 19. Thurston County Cause No. 15282-87. Date Admitted Jan. 10, 1935.

Seattle, July 19, 1934.

Tax Commission of the State of Washington, Olympia, Washington.

Attention: Mr. C. A. Manschreck

GENTLEMEN:

The attached two statements have been compiled in response to your letter of request of July 11, addressed to the San Francisco offices of this Company. On these statements, compiled separately for the years 1932 and 1933, we show by counties the assessed value of the real prop-

erty and the taxes paid thereon, the assessed value of the personal property, the taxes paid thereon, and the ratio of assessed to "full" value applied by the county assessor, and the total assessed value and the total taxes paid thereon, all as applying to the properties of The Pacific Telephone and Telegraph Company, State of Washington, and The Home Telephone and Telegraph Company of Spokane.

Yours truly, The Pacific Telephone and Telegraph Company, by R. W. Mastick, General Staff Engineer.

HWF:ES. Attachments.

[fol. 221] The Pacific Telephone and Telegraph Company and The Home Telephone and Telegraph Company of Spokane
Year 1932

Company and county	Real property		Personal property			Real and personal property	
	Assessed value—1932 by county assessors	Net taxes paid for year 1932	Assessed value—1932 by county assessors	Assessment ratio applied by assessors	Taxes paid for year 1932	Assessed value—1932 by county assessors	Total taxes paid for year 1932
The Pacific Telephone and Telegraph Company							
Adams	$.....	$.....	$42,632	.50	$1,913.87	$42,632	$1,913.87
Asotin	.....	.....	57,438	.50	4,079.70	57,438	4,079.70
Benton	.....	.....	19,440	.50	974.21	19,440	974.21
Chelan	6,740	420.39	111,627	.47	5,883.03	118,367	6,303.42
Clallam	1,948	135.92	169,573	.50	11,541.89	171,521	11,677.81
Clark	3,930	295.43	369,340	.50	25,198.63	373,270	25,494.06
Columbia	.....	.....	46,807	.50	1,829.94	46,807	1,829.94
Cowlitz	29,475	1,900.71	464,226	.50	27,609.83	493,701	29,510.54
Douglas	.....	.....	69,479	.50	2,858.67	69,479	2,858.67
Ferry	.....	.....	14,700	.45	793.75	14,700	793.75
Franklin	.....	.....	53,911	.50	3,383.20	53,911	3,383.20
Garfield	.....	.....	31,900	.50	1,459.57	31,900	1,459.57
Grant	.....	.....	38,736	.50	1,865.11	38,736	1,865.11
Grays Harbor	19,840	2,030.40	414,730	.40	41,528.83	434,570	43,559.23
Jefferson	.....	.....	48,600	.45	2,744.29	48,660	2,744.29
King	1,156,480	83,523.76	8,739,510	.50	644,229.38	9,895,990	727,753.14
Kitsap	18,960	1,509.22	289,970	.48	22,246.65	308,930	23,755.87
Kittitas	12,550	766.80	150,895	.50	7,138.65	163,445	7,905.45
Klickitat	.....	.....	2,555	.43	113.01	2,555	113.01
Lewis	4,066	316.94	249,395	.40	17,647.50	253,461	17,964.44
Lincoln	.....	.....	115,870	.50	4,647.22	115,870	4,647.22
Mason	.....	.....	51,865	.50	3,449.79	51,865	3,449.79
Okanogan	560	35.31	108,680	.50	6,365.39	109,240	6,400.70
Pacific	.....	.....	75,951	.46	6,495.47	75,951	6,495.47
Pend Oreille	.....	.....	3,681	.50	151.07	3,681	151.07

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The Pacific Telephone and Telegraph Company and The Home Telephone and Telegraph Company of Spokane
Year 1932—Continued

Company and county	Real property		Personal property			Real and personal property	
	Assessed value—1932 by county assessors	Net taxes paid for year 1932	Assessed value—1932 by county assessors	Assessment ratio applied by assessors	Taxes paid for year 1932	Assessed value—1932 by county assessors	Total taxes paid for year 1932
The Pacific Telephone and Telegraph Company							
Pierce	198,092	16,754.79	1,995,265	.50	170,816.70	2,193,357	187,571.49
San Juan	100	4.59	56,017	.38	2,718.56	56,117	2,723.15
Skagit	.....	.....	50,930	.40	3,171.32	50,930	3,171.32
Skamania	.....	.....	560	.50	59.07	960	59.07
Snohomish	670	38.61	153,175	.40	11,149.76	153,845	11,188.37
Spokane	.....	.....	217,379	.50	10,986.69	217,379	10,986.69
Stevens	30	1.53	69,360	.44	3,833.36	69,390	3,834.89
Thurston	6,150	487.80	313,238	.50	23,349.66	319,388	23,837.46
Wahkiakum	.....	.....	12,120	.40	780.18	12,120	780.18
Walla Walla	28,080	1,695.54	335,925	.46	18,851.06	364,005	20,546.60
Whatcom	16,150	1,109.12	496,107	.50	35,458.59	512,257	36,567.71
Whitman	.....	.....	177,850	.41	6,801.29	177,850	6,801.29
Yakima	67,650	4,659.07	447,360	.42	30,686.96	515,010	35,346.03
Total—Pacific Co.	$1,371,471	$115,685.93	$16,067,257	Avg. .487	$1,164,811.85	$17,638,728	$1,280,497.78
The Home Telephone and Telegraph Company of Spokane	$173,370	$9,602.45	$1,979,350	.50	$112,449.19	$2,152,720	$122,051.64
Total—State of Washington	$1,744,841	$125,288.38	$18,046,607	Avg. .488	$1,277,261.04	$19,791,448	$1,402,549.42

Notes—
Real property taxes are net after 3 per cent. rebate for full, single payment.
Included in King County figures are an assessment of $6,000.00 on non-operating personal property and taxes on the same of $446.88.

General Staff Engineer, Seattle, July 18, 1934.

Year 1933

Company and county	Real property		Personal property			Real and personal property	
	Assessed value—1933 by county assessors	Net taxes paid for year 1933	Assessed value—1933 by county assessors	Assessment ratio applied by assessors	Taxes paid for year 1933	Assessed value—1933 by county assessors	Total taxes paid for year 1933
The Pacific Telephone and Telegraph Company							
Adams	$.....	$.....	$40,420	.50	$1,646.00	$40,420	$1,646.00
Asotin	.....	.....	53,775	.50	2,929.29	53,775	2,929.29
Benton	.....	.....	18,540	.50	805.24	18,540	805.24
Chelan	6,740	444.63	105,381	.47	5,223.69	112,121	5,668.32
Clallam	1,948	111.88	161,387	.50	9,239.20	163,335	9,351.08
Clark	3,930	223.01	330,840	.50	16,537.28	334,770	16,760.29
Columbia	.....	.....	44,333	.50	1,537.79	44,333	1,537.79
Cowlitz	29,475	1,497.01	384,683	.45	18,694.10	414,158	20,191.11
Douglas	.....	.....	66,180	.50	3,076.31	66,180	3,076.31
Ferry	.....	.....	14,065	.47	640.33	14,065	640.33
Franklin	.....	.....	52,135	.50	2,399.56	52,135	2,399.56
Garfield	.....	.....	30,300	.50	1,151.22	30,300	1,151.22
Grant	.....	.....	37,906	.50	1,749.32	37,906	1,749.32
Grays Harbor	19,840	2,161.91	380,430	.40	40,443.59	400,270	42,605.50
Jefferson	.....	.....	47,556	.46	2,359.76	47,556	2,359.76
King	1,156,340	70,227.67	7,804,520	.47–.50	486,141.91	8,960,860	556,369.58
Kitsap	18,960	1,160.38	282,340	.48	17,312.90	301,300	18,473.28
Kittitas	12,550	699.37	144,640	.50	5,868.89	157,190	6,568.26
Klickitat	.....	.....	2,673	.43	84.82	2,673	84.82
Lewis	4,066	448.01	226,420	.40	12,041.94	230,486	12,289.95
Lincoln	.....	.....	105,066	.50	3,327.87	105,066	3,327.87
Mason	.....	.....	49,340	.50	2,581.00	49,340	2,581.00
Okanogan	560	30.96	102,600	.50	4,612.15	103,160	4,643.11
Pacific	.....	.....	71,077	.46	5,239.47	71,077	5,239.47

The Pacific Telephone and Telegraph Company and The Home Telephone and Telegraph Company of Spokane
Year 1932—Continued

Company and county	Real property		Personal property			Real and personal property	
	Assessed value—1932 by county assessors	Net taxes paid for year 1932	Assessed value—1932 by county assessors	Assessment ratio applied by assessors	Taxes paid for year 1932	Assessed value—1932 by county assessors	Total taxes paid for year 1932
The Pacific Telephone and Telegraph Company							
Pend Oreille	.....	.....	5,742	.50	219.83	5,742	219.83
Pierce	198,092	13,675.26	1,771,700	.47	124,480.12	1,969,792	138,155.38
San Juan	100	3.36	54,760	.39	2,009.60	54,860	2,012.96
Skagit	.....	.....	48,690	.40	2,099.48	48,690	2,099.48
Skamania	.....	.....	820	.46	46.35	820	46.35
Snohomish	670	30.42	153,800	.42	9,308.37	154,470	9,338.79
Spokane	.....	.....	184,000	.44	8,622.89	184,000	8,622.89
Stevens	30	1.38	66,785	.44	2,989.87	66,815	2,991.25
Thurston	6,150	420.31	295,628	.50	19,098.74	301,778	19,519.05
Wahkiakum	.....	.....	13,785	.50	709.83	13,785	709.83
Walla Walla	28,080	1,427.27	345,595	.50	16,338.12	373,675	17,765.39
Whatcom	16,150	895.17	466,027	.50	26,906.89	482,177	27,802.06
Whitman	.....	.....	148,560	.41	4,886.52	148,560	4,886.52
Yakima	67,650	3,871.61	413,080	.41	23,574.91	480,730	27,446.52
Total—Pacific Co.	$1,571,331	$97,129.61	$14,525,579	Avg. .467	$886,935.15	$16,096,910	$984,064.76
The Home Telephone and Telegraph Company of Spokane	173,370	8,643.88	1,640,000	.44	83,885.42	1,813,370	92,529.30
Total—State of Washington	$1,744,701	$105,773.49	$16,165.579	Avg. .464	$970,820.57	$17,910,280	$1,076,594.06

Notes—
Real property taxes are net after 3 per cent. rebate for full, single payment.
Personal property taxes are total for year. One-half has been paid to date.
King county Assessor applied ratio of .47 to tangible personal property and .50 to "franchise."

General Staff Engineer, Seattle, July 18, 1934.

[fol. 223] Certificate

STATE OF WASHINGTON,
County of Thurston, ss:

I hereby certify that the foregoing and attached document, consisting of three sheets, is a full, true and correct copy of the original letter dated July 19, 1934, from R. W. Mastic, General Staff Engineer of the Pacific Telephone and Telegraph Company, together with statements for the years 1932 and 1933 showing assessed value of the real property and the taxes paid thereon, the assessed value of the personal property, the taxes paid thereon, and the ratio of assessed to "full" value of the Pacific Telephone & Telegraph Company and the Home Telephone and Telegraph Company now on file in the office of the Tax Commission of the State of Washington at Olympia.

In witness whereof, I have hereunto set my hand and affixed the seal of the Tax Commission of the State of Washington, this 10th day of January, 1935.

Geo. L. Harrigan, Secretary of the Tax Commission of the State of Washington. (Seal.)

[fol. 224] DEFENDANT'S EXHIBIT No. 20

Received Aug. 11, 1933, Dept. Public Works

K 946 N A (2-30)

(Insignia of The Pacific Telephone and Telegrapgh Company)

The Pacific Telephone and Telegraph Company

Connecting Agreement

Agreement dated this 2nd day of August, 1933, between The Pacific Telephone and Telegraph Company, a corporation, herein called the Pacific Company and J. A. Howerton, doing business under the name and style of the Ilwaco Telephone and Telegraph Company herein called the Ilwaco Company.

Physical connection shall be established for the interchange of telephone and telegraph traffic between the sys-

tem operated by the Ilwaco Company, and the system operated by the Pacific Company, including systems of other companies with which either company to this agreement connects upon the following terms and conditions.

First. The system of the Ilwaco Company is designated on the annexed map, marked, "Exhibit A", and made a part of this agreement.

Second. Connection between the system of the Pacific Company and the system of the Ilwaco Company shall be made at the first or office pole of the Ilwaco Company at Ilwaco, Washington. The Ilwaco Company agrees that it will not connect the toll lines of the Pacific Company with the exchanges or toll lines of any individual, firm or corporation, other than those which may be mutually agreed upon.

Third. Each Company will make the proper switchboard or other connection and perform the necessary operating for prompt communication between its patrons and patrons of the other.

Fourth. Each company will construct, equip, maintain and operate its system so that good telephone and telegraph service shall be furnished to the public. The Ilwaco Company agrees to furnish and maintain adequate equip- [fol. 225] ment upon its switchboard for handling thereon the toll lines of the Pacific Company.

Fifth. Each Company shall take reasonable precautions in the location,, construction and maintenance of its lines for protection against hazard and interference from foreign wire lines.

Sixth. The charges for all traffic interchanged hereunder shall be in accordance with lawful published rates.

Seventh. Each company shall be responsible for all charges for traffic interchanged under this agreement and charged to its patrons or to patrons of any of its connecting companies and shall account to the other company for the latter's share thereof.

All accounts shall be adjusted and remittances in full shall be made by either company to the other not later

than the 25th of the month in which the intercompany statement is rendered.

Eighth. The Pacific Company agrees to pay to the Ilwaco Company compensation in amount equivalent to Twenty-five Per Cent (25%) of the Pacific Company's tolls charged against the patrons of the Ilwaco Company at the point of connection, it being mutually agreed that the foregoing is full compensation to the Ilwaco Company for furnishing and operating interexchange terminal equipment and facilities therefor in handling the interexchange telephone and telegraph traffic, for billing and collecting all charges for interexchange telephone and telegraph messages charged by the Pacific Company against the Ilwaco Company, for assuming any and all amounts which are charged, including any amounts which may be found to be uncollectible, for furnishing all necessary terminal equipment and facilities for handling interexchange messages from public telephones, for paying all commissions on interexchange message tolls originating at public telephones, for furnishing battery and ringing power necessary in the operating of interexchange telephone and telegraph traffic, for assuming all other and miscellaneous expenses incurred by the Ilwaco [fol. 226] Company in handling interexchange business. It is mutually agreed that no compensation as set out herein shall be paid by either company to the other on communications involving the toll lines of both companies, nor on "other line" tolls, nor on charges for messenger service.

Ninth. The provisions of Article Eighth above shall apply to Transatlantic, Transpacific, Ship-to-Shore, and any international communications not included in the foregoing originating on the system of the Ilwaco Company, and such communications for the purpose of computing compensation and prorate shall be considered as if each such Transatlantic communication had been a person-to-person message to the City of New York, each such Transpacific communication had been a person-to-person message to San Francisco, each such Shore-to-ship message had been a person-to-person communication to the appropriate shore transfer point for such messages, and any international communications not included in the foregoing shall be treated as terminating at the appropriate international

transfer point on or near the boundaries of continental United States.

Tenth. Each Company agrees to furnish the other, upon request, for statistical purposes, information regarding the number and classification of stations connected, public offices and tariffs. Each company shall keep proper records of its transactions hereunder and such records, together with the vouchers relating thereto, shall at all reasonable times be subject to inspection by the other.

Eleventh. Each of the companies hereto agrees to indemnify the other and hold it harmless from any and all liability for injury to persons or damage to property resulting in any way from the connection of its circuits with those of such other company. And each company hereto assumes all liability for, and agrees to indemnify and hold the other company harmless from damages of whatsoever nature, resulting from defects in plant construction, or [fol. 227] maintenance or for negligence, mistakes, delays, non-delivery or other defaults, in the interchange of telephone and telegraph business that may occur at its own offices or upon its own lines or that may be caused by the default of its own employees; and whenever the responsibility for any such default cannot be located, it is mutually agreed, that any damage or loss resulting therefrom shall be divided and born- equally by the companies hereto, but neither company shall be liable to the other for loss or damage resulting from interruptions to service which could not have been avoided by the exercise of reasonable care and diligence.

Twelfth. If either company shall default in the payment of any sum due hereunder, or shall violate any other provisions of this agreement, and if such default or violation shall continue for thirty (30) days after written notice thereof, the other company may terminate this agreement forthwith by written notice.

Thirteenth. The failure of either company hereto to comply with or to enforce or insist upon compliance by the other company with any of the terms and conditions of this agreement, or waiver by either company hereto of the same in any instance or instances, shall not be construed as a gen-

eral waiver or relinquishment of any terms or conditions, but the same shall be and remain at all times in full force and effect.

Fourteenth. ——.

Fifteenth. This agreement shall take effect as of the 21st day of July, 1933, and unless sooner terminated as herein provided, shall continue in force until the Twentieth day of July, 1934, and thereafter until and unless terminated by ninety (90) days' prior notice in writing from either company to the other.

Time is of the essence of this agreement.

This agreement shall be binding upon the respective companies hereto and their and each of their successors and assigns.

[fol. 228] In witness whereof, the said companies have caused this agreement to be executed in their behalf the day and year first above written.

The Pacific Telephone and Telegraph Company,
(Sgd) by H. D. Pillsbury, N. R. P., President.

Attest: (Sgd) W. G. Kleinschmidt, Secretary.

(Sgd) J. A. Howerton, Doing business under the name and style of the Ilwaco Telephone and Telegraph Company.

Witness: (Sgd) J. R. Howerton.
Form Approved: (Sgd) S. L. Wright, Attorney.

[fol. 229] Certificate

STATE OF WASHINGTON,
County of Thurston, ss:

I hereby certify that the foregoing and attached document is a full, true and correct copy of original Connecting Agreement dated August 2, 1933 between the Pacific Telephone and Telegraph Company and J. A. Howerton, doing business under the name and style of the Ilwaco Telephone and Telegraph Company, now on file in the office of the Department of Public Works of Washington at Olympia.

In witness whereof, I have hereunto set my hand and

affixed the seal of the Department of Public Works of Washington, this 9th day of January, 1935.

A. E. Rotchford, Secretary of the Department of Public Works of Washington. (Seal.)

Defendant's Exhibit No. 20. Thurston County Cause No. 16282-87. Date Admitted Jan. 10, 1935.

[fol. 230] DEFENDANT'S EXHIBIT No. 21

Dept. of Public Wks., Received Apr. 24, 1930, Ref'd to ——

Checked. H.W.-M.F.

Connecting Agreement

Agreement made March 26th, 1930, between The Pacific Telephone and Telegraph Company, a corporation, herein called the "Pacific Company" and the Oregon-Washington Telephone Company, a corporation, herein called the "Oregon Company".

Physical connection shall be established for the interchange of telephone and telegraph traffic between the system operated by the Oregon Company and the system operated by the Pacific Company, including systems of other companies with which each connects, upon the following terms and conditions:

First. The territory to be served by the Oregon Company will be the territory designated on map attached hereto, marked Exhibit "A" and which is made a part of this agreement.

Second. Connection between the system of the Pacific Company and the system of the Oregon Company shall be made at the first or office pole at Goldendale, Granger, Grandview, Mabton, Prosser, Sunnyside, Toppenish, Wapato and Zillah, Washington, and Hood River, Oregon, and at the Primary Rate Area at The Dalles, Oregon. The Oregon Company agrees that it will not connect the lines of the Pacific Company with the exchanges or toll lines of any individual, firm or corporation, other than those which may be mutually agreed upon, without the written consent of the Pacific Company.

[fol. 231] Third. Each company will make the proper switchboard or other connection and perform the necessary operating for prompt communication between its patrons and the patrons of the other.

Fourth. Each company will construct, equip, maintain and operate its system so that good telephone and telegraph service shall at all times be furnished to the public. Each company agrees to furnish and maintain adequate equipment upon its switchboards where necessary for handling thereon the toll lines of the other company.

Fifth. Under no condition shall the lines of either company, or of its connecting companies, be exposed to high tension lines unless protected in accordance with a recognized standard.

Sixth. The charges for all traffic interchanged hereunder shall be in accordance with lawful published rates.

Seventh. Each company shall be responsible for all charges for traffic interchanged under this agreement and charged to its patrons or to the patrons of any of its connecting companies, and shall remit to the other company for the latter's share thereof on or before the twenty-fifth of the month in which the intercompany statement is rendered.

The Pacific Company agrees to pay the Oregon Company a commission of 30 per cent of all the Pacific Company's tolls charged against the patrons of the Oregon Company at Goldendale, Grandview, Granger, Mabton, Prosser, Sunnyside, Toppenish, Wapato and Zillah, Washington. The Oregon Company agrees to pay to the Pacific Company a commission of 30 per cent of all the origin Company's tolls charged against the patrons of the Pacific Company at the Dalles. It is mutually agreed that the commissions mentioned are full compensation for performing all necessary operating, furnishing, all necessary terminal equipment and facilities therefor in handling the traffic, for bill-[fol. 232] ing and collecting all tolls, for assuming any and all amounts which are charged including any amounts which may be found to be uncollectible, for furnishing all necessary terminal equipment and facilities for handling Public Pay Stations, for paying all commissions due pay station subscribers on tolls originating therefor, for furnishing

battery and ringing power necessary in the operation of the toll traffic, for assuming all miscellaneous expenses incurred in handling the toll business, and for otherwise acting as toll agent. It is mutually agreed that no commission shall be paid by or to either company on tolls for communications in which the toll lines of both Companies are involved nor on "other line" tolls or charges for messenger service.

Eighth. The interchange of business shall be as follows:

1. Business originating at Granger, Grandview, Mabton, Prosser, Sunnyside, Toppenish, Wapato, Zillah, and Goldendale, and destined to points on the lines of the Pacific Company or its other connecting companies and vice versa shall be routed entirely over the lines of the Pacific Company.

2. Business originating at points on the lines of the Oregon Company routed via Hood River and the Dalles, Oregon, and Goldendale and Wapato, Washington, and destined to points on the lines of the Pacific Company or its other connecting companies and Company at Hood River, The Dalles, Goldendale and Wapato respectively.

3. Business originating at Granger, Grandview, Mabton, Prosser, Sunnyside, Toppenish, Wapato and Zillah and destined to Goldendale and vice versa shall be routed entirely over the lines of the Pacific Company.

4. Business originating at points on the lines of the Oregon Company routed via Hood River and The Dalles and destined to Granger, Grandview, Mabton, Prosser, Sunnyside, Toppenish, Wapato, Zillah and Goldendale and vice versa shall be transferred to or by the Pacific Company at Hood River and The Dalles, respectively.

5. Business originating at White Salmon and destined to The Dalles and vice versa shall be routed over the lines of the Pacific Company between The Dalles and Hood River.

[fol. 233] 6. Business between Granger, Grandview, Mabton, Prosser, Sunnyside, Toppenish, Wapato and Zillah may be routed over the lines of the Oregon Company.

7. The Oregon Company may establish direct connection between the following points on its system: Lyle and Goldendale; Goldendale and Mabton. In the event that direct connection is established between one or both of the routes mentioned, the Oregon Company may route business which originates and terminates on its system over said route or routes. When such connection or connections are established, it is mutually agreed that Paragraphs 3 and 4 above will be amended or cancelled to meet the changed conditions.

Ninth. The Oregon Company agrees to lease from the Pacific Company telephone circuit or circuits extending from the Pacific Company's central office in The Dalles, Oregon, to the present Primary Rate Area, a distance of approximately one and one-half (1.5) miles at which point the Oregon Company's toll lines terminates. The Oregon Company agrees to pay the Pacific Company for circuit or circuits so leased at the rate of four and 50/100 ($4.50) per month per circuit.

Tenth. The Oregon Company agrees to deliver to its patrons such of the Pacific Company's directories as are provided by mutual agreement. Under arrangements to be mutually agreed upon, the subscribers of the Oregon Company may be listed in the Pacific Company's directories and the Oregon Company agrees to furnish the necessary information upon request.

Eleventh. Each company agrees to furnish the other, upon request, for statistical purposes, information regarding the number and classification of stations connected, public offices and tariffs and to maintain records and accounts and in so far as they relate to the toll business interchanged, in such a manner and in such a way that said records and accounts may be open and available to either company's authorized representatives for inspection for the purpose of checking the accuracy and correctness of the monthly statements hereinbefore referred to.

[fol. 234] Twelfth. Each of the parties hereto agrees to indemnify the other and hold it harmless from any and all liability for injury to persons or damage to property resulting in any way from the connection of its circuits with those of such other party. And each party hereto assumes

all liability for, and agrees to indemnify and hold the other party harmless from damages of whatsoever nature resulting from defects in plant construction or maintenance, of for negligence, mistakes, delays, non-delivery, or other defaults in the interchange of telephone and telegraph business that may occur at its own offices or upon its own lines, or that may be caused by the default of its own employees; and whenever the responsibility for any such default cannot be located, it is mutually agreed that any damage or loss resulting therefrom shall be divided and borne equally by the parties hereto; but neither party shall be liable to the other for loss or damage resulting from interruptions to service which could not have been avoided by the exercise of reasonable care and diligence.

Thirteenth. If either company shall default in the payment of any sum due hereunder, or shall violate any other provision of this agreement, and if such default or violation shall continue for thirty (30) days after written notice thereof, the other company may terminate this agreement forthwith by written notice.

Fourteenth. It is mutually agreed that the Pacific Company may, at its option, maintain and operate its toll stations at Wishram and S. P. & S. Power House, Washington, as shown on Exhibit "A" referred to in Paragraph One of this Agreement. This agreement cancels and supersedes the Connecting Agreement between The Pacific Telephone and Telegraph Company and the Oregon-Washington Telephone Company dated February 25, 1928 due to expire June 1, 1947, and also cancels and supersedes the Connecting [fol. 235] Agreement between The Pacific Telephone and Telegraph Company and The Benton Independent Telephone Company dated March 21, 1917, and Supplemental agreement thereto dated June 21, 1918, which were assigned to the Oregon-Washington Telephone Company March 1, 1929.

Fifteenth. This agreement shall take effect on the twenty-first day of May, 1929, and, unless sooner terminated as herein provided, shall continue in force until the first day of June, 1947, and thereafter until and unless terminated by ninety (90) days' prior notice in writing from either company to the other.

Time is the essence of this agreement.

This agreement shall be binding upon the respective parties hereto and their and each of their successors and assigns.

In Witness whereof, the said companies have caused this agreement to be executed in their behalf this 26th day of March, 1930.

The Pacific Telephone and Telegraph Company, by H. D. Pillsbury, N. R. P., President. (Seal.)

Attest: W. J. Phillips, Secretary.

Oregon-Washington Telephone Company, by J. E. Smithson, President. (Seal.)

Attest: E. O. Blancher, Secretary.

Form Approved: Hugh Fullerton, Attorney.

[fol. 236] Certificate

STATE OF WASHINGTON,
County of Thurston, ss:

I hereby certify that the foregoing and attached document is a full, true and correct copy of original Connecting Agreement dated March 26, 1933, between the Pacific Telephone and Telegraph Company and the Oregon-Washington Telephone Company, now on file in the office of the Department of Public Works of Washington at Olympia.

In witness whereof, I have hereunto set my hand and affixed the seal of the Department of Public Works of Washington, this 9th day of January, 1935.

A. E. Rotchford, Secretary of the Department of Public Works of Washington. (Seal.)

Defendant's Exhibit No. 21. Thurston County Cause No. 15282-87. Date Admitted January 10, 1935.

[fol. 237] PLAINTIFF'S EXHIBIT No. 22

Thurston County Cause No. 15282-87

Date Admitted: Jan. 10, 1935

Commissioners: Harold H. Henneford, Chairman; Thomas S. Hedges, T. M. Jenner. George L. Harrigan, Secretary.

State of Washington Tax Commission, Olympia

May 29, 1934.

Messrs. McMicken, Ramsey, Rupp & Schweppe, Attorneys-at-Law, Colman Building, Seattle, Washington.

GENTLEMEN:

Relative to the filing of returns by The Pacific Telephone & Telegraph Company, The Home Telephone & Telegraph Company, Citizens Independent Telephone Company, Winlock Home Telephone Company and Home Telephone Company of Castle Rock, under the provisions of Chapter 191, Laws of 1933, as amended by Chapter 57, Laws of 1933, Ex. Sess., you are hereby advised that unless returns covering the period from August 1, 1933, to March 31, 1934, both dates inclusive, are filed by the said telephone companies with the Tax Commission of the State of Washington at its office in the City of Olympia, on or before June 4, 1934, the Commission will proceed to assess the tax against each company to which tax will be added a penalty of 10% for failure to make a return and likewise shall add a further penalty of one per cent per month of the amount of tax for each thirty days or portion thereof from the date upon which the tax was due, as provided by said law.

Very truly yours, Tax Commission of the State of Washington, by T. M. Jenner, Commissioner.

TMJ:K.

[fol. 238] Maurice McMicken. H. J. Ramsey. Otto B. Rupp. Alfred J. Schweppe. Maurice R. McMicken. Bernard Reiter. J. Gordon Gose. Winlock Miller, Jr.

McMicken, Ramsey, Rupp & Schweppe,
Attorneys and Counselors at Law,
657-71 Colman Building
Seattle, Washington

June 29, 1934.

State Tax Commission, Business Tax Division, Olympia, Washington.

GENTLEMEN:

The Pacific Telephone and Telegraph Company herewith files its business tax return, as provided for by Chapter 191, Laws of 1933, with amendments thereto, for the month of May, 1934.

Said filing is made under protest and without prejudice to the rights of said company to contest the validity of the act or acts under which the filing is made, either in the suit now pending or in any proceeding whatsoever subsequently brought either by the Company or by anyone else, and without prejudice to the rights of the Company to show, in any appropriate manner or proceeding, that the Tax Commission of the State of Washington has misinterpreted said act or acts, and without prejudice to the right of the Company to contest any tax, or portion thereof, which the Tax Commission may seek to impose under said act or acts.

Very truly yours, The Pacific Telephone & Telegraph Company, by —— ——, Its Attorneys.

Mail One Copy to the Tax Commission of the State of Washington—Retain One Copy for Your Files

Form 3906

BUSINESS TAX RETURN

Chapter 191, Laws of Washington, 1933, and Amendments Thereto

MONTHLY RETURNS MUST BE MADE IF TAX LIABILITY EXCEEDS $10.00 PER MONTH

Use Only One Line

This Return for the Month of August **1933**

OR

This Return for the Quarter Ending **193**

Remittances. Make remittance payable to TAX COMMISSION and mail it with this return to the BUSINESS TAX DIVISION, TAX COMMISSION OF THE STATE OF WASHINGTON, OLYMPIA, WASHINGTON, within 15 days after the close of the period covered.

The law provides penalties for failure to file returns and make payments within the time specified.

BE SURE THAT NAME AND ADDRESS ARE CORRECT

File Number

Name: The Pacific Telephone and Telegraph Company,

Street No.: 1200 Third Avenue,

City and State: Seattle, Washington.

This space for department use only

Remittance checked	File checked—Cash entry
Office review	Ledger checked
Audit—Office. Date	By
Audit—Field. Date	By
Final approval. Date	By

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WASHINGTON

Column 1 Taxable Activities	Column 2 Business Classification	Column 3 Gross Amount	Column 4 Deductions	Column 5 Taxable Amount	Col. 6 Rate	Column 7 Amount of Tax	Column 8 Do Not Use
Selling Tangible Property	* Retailing				.005		
	Wholesaling				.002		
Manufacturing	Manufacturing—All lines				.0025		
Extracting	Logging—Mining—Fishing				.003		
	Oil and Natural Gas				.01		
	Extracting Other Products				.003		
Public Service and Utilities	Steam Railways				.015		
	Electric Interurban and Street Railways Urban Automotive Transp't'n				.005		
	Light and Power—Water				.03		
	Telephone—Telegraph	$813,806 37	$83,745 06	$730,061 31	.03	$21,901 84	
	Manufactured Gas				.02		
	Express and/or Car Companies				.02		
	Highway Transportation				.015		
	Other Utilities				.015		
					.015		
Financial	Banks, Savings Assoc., etc.				.004		
	Stock Broker, Security House, Finance Co.				.02		
Amusement	Recreation and Amusement				.015		
Publishing, etc.	Outdoor Advertising				.01		
	Newspaper, Periodical Pub.				.0025		
	Radio Broadcasting				.01		
Service and Other Activities	* Professional, service and other businesses not included above				.005		
	Total tax due for the period covered.....					$21,901 84	

* Persons, such as contractors, operators of garages, repair-shops, machine-shops and the like, engaging in business which combines the sale of tangible property with the rendition of service should report, under the line headed "Service and Other Activities," the gross income of the business, which includes gross proceeds of sales of tangible property as well as gross income from service charges, etc.

READ INSTRUCTIONS CAREFULLY

Be Sure to Complete the Back of this Form

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DETAIL OF DEDUCTIONS

(From Summary shown in Column 4, reverse side)

Type of Deduction		Amount	
Trade Discounts	Trade discounts allowed and deducted by the seller		
Freight Out	Allowable to seller only, not to purchaser—Actual freight or delivery charges: (1) Paid to the carrier by the seller and invoiced to the purchaser as such, or (2) paid by the purchaser to the carrier (other than the seller) and deducted from the invoice price by the purchaser.		
Cash Discounts	Cash discounts actually allowed by the taxpayer and taken by the purchaser, if the amount thereof has been included in value of products, gross proceeds of sales or gross income reported for tax purposes.		
Motor Vehicle Fuel Tax	Amount collected by the taxpayer as an excise upon motor vehicle fuel (Gallons sold)		
	The following deductions are not allowable to persons taxable as manufacturers or extractors, measure of tax being "value of products"		
Interstate—Foreign	Proceeds of sales or income derived wholly in interstate or foreign commerce	$68,149	32
Sales to U. S. Gov't	Proceeds of sales to the United States Government, its departments or institutions	7,349	33
Sales to State	Proceeds of sales to the State of Washington, its departments or institutions. Counties, cities, school districts and the like are not state departments or institutions	8,246	41
TOTAL amount of deductions as reported in column 4, page 1		$83,745	06

DETAIL OF OPERATIONS—By Location

This schedule must be completed by each taxpayer whose return includes business transacted at more than one location in the state. Give details for each store, plant or location in the state, including main store or plant.

BUSINESS LOCATIONS INCLUDED IN RETURN			Gross Amount	Deductions	Taxable Amount	Amount of Tax
Name Under Which Operated	Street and No. or R. F. D.	Postoffice				
The Pacific Telephone and Telegraph Company	1200 Third Ayenue	Seattle, Washington	$813,806 37	$83,745 06	$730,061 31	$21,901 84
Totals represent amounts reported on reverse side			$813,806 37	$83,745 06	$730,061 31	$21,901 84

The undersigned taxpayer declares that he has read the foregoing return and certifies it to be correct.

Dated this 4th day of June, 1934 Firm name The Pacific Telephone and Telegraph Company

By (Sd) I.F.Dix

Office or title Vice President

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If Additional Space is Needed, Attach Supplementary Sheets of This Size

Mail One Copy to the Tax Commission of the State of Washington—Retain One Copy for Your Files

Form 3906

BUSINESS TAX RETURN

Chapter 191, Laws of Washington, 1933, and Amendments Thereto

MONTHLY RETURNS MUST BE MADE IF TAX LIABILITY EXCEEDS $10.00 PER MONTH

Use Only One Line

This Return for the Month of September **193** 3

OR

This Return for the Quarter Ending _____ **193**

Remittances. Make remittance payable to TAX COMMISSION and mail it with this return to the BUSINESS TAX DIVISION, TAX COMMISSION OF THE STATE OF WASHINGTON, OLYMPIA, WASHINGTON, within 15 days after the close of the period covered.

The law provides penalties for failure to file returns and make payments within the time specified.

BE SURE THAT NAME AND ADDRESS ARE CORRECT

File Number

Name: The Pacific Telephone and Telegraph Company,

Street No.: 1200 Third Avenue,

City and State: Seattle, Washington

This space for department use only

Remittance checked	File checked—Cash entry
Office review	Ledger checked
Audit—Office. Date	By
Audit—Field. Date	By
Final approval. Date	By

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WASHINGTON

Column 1 Taxable Activities	Column 2 Business Classification	Column 3 Gross Amount	Column 4 Deductions	Column 5 Taxable Amount	Col. 6 Rate	Column 7 Amount of Tax	Column 8 Do Not Use
Selling Tangible Property	* Retailing				.005		
	Wholesaling				.002		
Manufacturing	Manufacturing—All lines				.0025		
Extracting	Logging—Mining—Fishing				.003		
	Oil and Natural Gas				.01		
	Extracting Other Products				.003		
Public Service and Utilities	Steam Railways				.015		
	Electric Interurban and Street Railways Urban Automotive Transp't'n				.005		
	Light and Power—Water				.03		
	Telephone—Telegraph	$830,397 23	$86,504 02	$743,893 21	.03	$22,316 80	
	Manufactured Gas				.02		
	Express and/or Car Companies				.02		
	Highway Transportation				.015		
	Other Utilities				.015		
					.015		
Financial	Banks, Savings Assoc., etc.				.004		
	Stock Broker, Security House, Finance Co.				.02		
Amusement	Recreation and Amusement				.015		
Publishing, etc.	Outdoor Advertising				.01		
	Newspaper, Periodical Pub.				.0025		
	Radio Broadcasting				.01		
Service and Other Activities	* Professional, service and other businesses not included above				.005		

Total tax due for the period covered..... $22,316 80

* Persons, such as contractors, operators of garages, repair-shops, machine-shops and the like, engaging in business which combines the sale of tangible property with the rendition of service should report, under the line headed "Service and Other Activities," the gross income of the business, which includes gross proceeds of sales of tangible property as well as gross income from service charges, etc.

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READ INSTRUCTIONS CAREFULLY

Be Sure to Complete the Back of this Form

DETAIL OF DEDUCTIONS

(From Summary shown in Column 4, reverse side)

Type of Deduction		Amount	
Trade Discounts	Trade discounts allowed and deducted by the seller		
Freight Out	Allowable to seller only, not to purchaser—Actual freight or delivery charges: (1) Paid to the carrier by the seller and invoiced to the purchaser as such, or (2) paid by the purchaser to the carrier (other than the seller) and deducted from the invoice price by the purchaser.		
Cash Discounts	Cash discounts actually allowed by the taxpayer and taken by the purchaser, if the amount thereof has been included in value of products, gross proceeds of sales or gross income reported for tax purposes.		
Motor Vehicle Fuel Tax	Amount collected by the taxpayer as an excise upon motor vehicle fuel (Gallons sold)		
	The following deductions are not allowable to persons taxable as manufacturers or extractors, measure of tax being "value of products"		
Interstate—Foreign	Proceeds of sales or income derived wholly in interstate or foreign commerce	$70,908	27
Sales to U. S. Gov't	Proceeds of sales to the United States Government, its departments or institutions	7,349	34
Sales to State	Proceeds of sales to the State of Washington, its departments or institutions. Counties, cities, school districts and the like are not state departments or institutions	8,246	41
TOTAL amount of deductions as reported in column 4, page 1		$86,504	02

DETAIL OF OPERATIONS—By Location

This schedule must be completed by each taxpayer whose return includes business transacted at more than one location in the state. Give details for each store, plant or location in the state, including main store or plant.

BUSINESS LOCATIONS INCLUDED IN RETURN			Gross Amount	Deductions	Taxable Amount	Amount of Tax
Name Under Which Operated	Street and No. or R. F. D.	Postoffice				
The Pacific Telephone and Telegraph Company	1200 Third Avenue	Seattle, Washington	$830,397 23	$86,504 02	$743,893 21	$22,316 80
Totals represent amounts reported on reverse side			$830,397 23	$86,504 02	$743,893 21	$22,316 80

The undersigned taxpayer declares that he has read the foregoing return and certifies it to be correct.

Dated this 4th day of June, 1934 Firm name The Pacific Telephone and Telegraph Company

By (Sd) I.F.Dix

Office or title Vice President

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If Additional Space is Needed, Attach Supplementary Sheets of This Size

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Mail One Copy to the Tax Commission of the State of Washington—Retain One Copy for Your Files

Form 3906

BUSINESS TAX RETURN

Chapter 191, Laws of Washington, 1933, and Amendments Thereto

MONTHLY RETURNS MUST BE MADE IF TAX LIABILITY EXCEEDS $10.00 PER MONTH

Use Only One Line

This Return for the Month of October **1933**

OR

This Return for the Quarter Ending _____ **193**

Remittances. Make remittance payable to TAX COMMISSION and mail it with this return to the BUSINESS TAX DIVISION, TAX COMMISSION OF THE STATE OF WASHINGTON, OLYMPIA, WASHINGTON, within 15 days after the close of the period covered.

The law provides penalties for failure to file returns and make payments within the time specified.

BE SURE THAT NAME AND ADDRESS ARE CORRECT

File Number

Name: The Pacific Telephone and Telegraph Company

Street No.: 1200 Third Avenue

City and State: Seattle, Washington

This space for department use only

Remittance checked	File checked—Cash entry
Office review	Ledger checked
Audit—Office. Date	By
Audit—Field. Date	By
Final approval. Date	By

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WASHINGTON

Column 1 Taxable Activities	Column 2 Business Classification	Column 3 Gross Amount	Column 4 Deductions	Column 5 Taxable Amount	Col. 6 Rate	Column 7 Amount of Tax	Column 8 Do Not Use
Selling Tangible Property	* Retailing				.005		
	Wholesaling				.002		
Manufacturing	Manufacturing—All lines				.0025		
Extracting	Logging—Mining—Fishing				.003		
	Oil and Natural Gas				.01		
	Extracting Other Products				.003		
Public Service and Utilities	Steam Railways				.015		
	Electric Interurban and Street Railways Urban Automotive Transp't'n				.005		
	Light and Power—Water				.03		
	Telephone—Telegraph	$837,333 72	$85,398 97	$751,934 75	.03	$22,558 04	
	Manufactured Gas				.02		
	Express and/or Car Companies				.02		
	Highway Transportation				.015		
	Other Utilities				.015		
					.015		
Financial	Banks, Savings Assoc., etc.				.004		
	Stock Broker, Security House, Finance Co.				.02		
Amusement	Recreation and Amusement				.015		
Publishing, etc.	Outdoor Advertising				.01		
	Newspaper, Periodical Pub.				.0025		
	Radio Broadcasting				.01		
Service and Other Activities	* Professional, service and other businesses not included above				.005		

Total tax due for the period covered..... $22,558 04

* Persons, such as contractors, operators of garages, repair-shops, machine-shops and the like, engaging in business which combines the sale of tangible property with the rendition of service should report, under the line headed "Service and Other Activities," the gross income of the business, which includes gross proceeds of sales of tangible property as well as gross income from service charges, etc.

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READ INSTRUCTIONS CAREFULLY

Be Sure to Complete the Back of this Form

DETAIL OF DEDUCTIONS

(From Summary shown in Column 4, reverse side)

Type of Deduction		Amount	
Trade Discounts	Trade discounts allowed and deducted by the seller		
Freight Out	Allowable to seller only, not to purchaser—Actual freight or delivery charges: (1) Paid to the carrier by the seller and invoiced to the purchaser as such, or (2) paid by the purchaser to the carrier (other than the seller) and deducted from the invoice price by the purchaser.		
Cash Discounts	Cash discounts actually allowed by the taxpayer and taken by the purchaser, if the amount thereof has been included in value of products, gross proceeds of sales or gross income reported for tax purposes.		
Motor Vehicle Fuel Tax	Amount collected by the taxpayer as an excise upon motor vehicle fuel (Gallons sold)		
	The following deductions are not allowable to persons taxable as manufacturers or extractors, measure of tax being "value of products"		
Interstate—Foreign	Proceeds of sales or income derived wholly in interstate or foreign commerce	$69,803	23
Sales to U. S. Gov't	Proceeds of sales to the United States Government, its departments or institutions	7,349	33
Sales to State	Proceeds of sales to the State of Washington, its departments or institutions. Counties, cities, school districts and the like are not state departments or institutions	8,246	41
TOTAL amount of deductions as reported in column 4, page 1		$85,398	97

DETAIL OF OPERATIONS—By Location

This schedule must be completed by each taxpayer whose return includes business transacted at more than one location in the tate. Give details for each store, plant or location in the state, including main store or plant.

BUSINESS LOCATIONS INCLUDED IN RETURN			Gross Amount	Deductions	Taxable Amount	Amount of Tax
Name Under Which Operated	Street and No. or R. F. D.	Postoffice				
he Pacific Telephone	1200 Thi rd	Seattle				
nd Telegraph Company	Avenue	Washington	$837,333 72	$85,398 97	$751,934 75	$22,558 04
Totals represent amounts reported on reverse side			$837,333 72	$85,398 97	$751,934 75	$22,558 04

The undersigned taxpayer declares that he has read the foregoing return and certifies it to be correct.

Dated this 4th day of June, 1934 Firm name The Pacific Telephone and Telegrapl Company

By (Sd) I.F.Dix

Office or title Vice President

If Additional Space is Needed, Attach Supplementary Sheets of This Size

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136

Mail One Copy to the Tax Commission of the State of Washington—Retain One Copy for Your Files

Form 3906

BUSINESS TAX RETURN

Chapter 191, Laws of Washington, 1933, and Amendments Thereto

MONTHLY RETURNS MUST BE MADE IF TAX LIABILITY EXCEEDS $10.00 PER MONTH

Use Only One Line

This Return for the Month of November **193** 3

OR

This Return for the Quarter Ending ..... **193** .....

Remittances. Make remittance payable to TAX COMMISSION and mail it with this return to the BUSINESS TAX DIVISION, TAX COMMISSION OF THE STATE OF WASHINGTON, OLYMPIA, WASHINGTON, within 15 days after the close of the period covered. The law provides penalties for failure to file returns and make payments within the time specified.

BE SURE THAT NAME AND ADDRESS ARE CORRECT

File Number

Name: The Pacific Telephone and Telegraph Company

Street No.: 1200 Third Avenue

City and State: Seattle, Washington

This space for department use only

Remittance checked	File checked—Cash entry
Office review	Ledger checked
Audit—Office. Date	By
Audit—Field. Date	By
Final approval. Date	By

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WASHINGTON

Column 1 Taxable Activities	Column 2 Business Classification	Column 3 Gross Amount	Column 4 Deductions	Column 5 Taxable Amount	Col. 6 Rate	Column 7 Amount of Tax	Column 8 Do Not Use
Selling Tangible Property	* Retailing				.005		
	Wholesaling				.002		
Manufacturing	Manufacturing—All lines				.0025		
Extracting	Logging—Mining—Fishing				.003		
	Oil and Natural Gas				.01		
	Extracting Other Products				.003		
Public Service and Utilities	Steam Railways				.015		
	Electric Interurban and Street Railways; Urban Automotive Transp't'n				.005		
	Light and Power—Water				.03		
	Telephone—Telegraph	$835,384 55	$87,281 02	$748,103 53	.03	$22,443 11	
	Manufactured Gas				.02		
	Express and/or Car Companies				.02		
	Highway Transportation				.015		
	Other Utilities				.015		
					.015		
Financial	Banks, Savings Assoc., etc.				.004		
	Stock Broker, Security House, Finance Co.				.02		
Amusement	Recreation and Amusement				.015		
Publishing, etc.	Outdoor Advertising				.01		
	Newspaper, Periodical Pub.				.0025		
	Radio Broadcasting				.01		
Service and Other Activities	* Professional, service and other businesses not included above				.005		

Total tax due for the period covered..... $22,443 11

* Persons, such as contractors, operators of garages, repair-shops, machine-shops and the like, engaging in business which combines the sale of tangible property with the rendition of service should report, under the line headed "Service and Other Activities," the gross income of the business, which includes gross proceeds of sales of tangible property as well as gross income from service charges, etc.

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READ INSTRUCTIONS CAREFULLY

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DETAIL OF DEDUCTIONS

(From Summary shown in Column 4, reverse side)

Type of Deduction		Amount	
Trade Discounts	Trade discounts allowed and deducted by the seller		
Freight Out	Allowable to seller only, not to purchaser—Actual freight or delivery charges: (1) Paid to the carrier by the seller and invoiced to the purchaser as such, or (2) paid by the purchaser to the carrier (other than the seller) and deducted from the invoice price by the purchaser.		
Cash Discounts	Cash discounts actually allowed by the taxpayer and taken by the purchaser, if the amount thereof has been included in value of products, gross proceeds of sales or gross income reported for tax purposes.		
Motor Vehicle Fuel Tax	Amount collected by the taxpayer as an excise upon motor vehicle fuel (Gallons sold)		
	The following deductions are not allowable to persons taxable as manufacturers or extractors, measure of tax being "value of products"		
Interstate—Foreign	Proceeds of sales or income derived wholly in interstate or foreign commerce	$71,685	28
Sales to U. S. Gov't	Proceeds of sales to the United States Government, its departments or institutions	7,349	33
Sales to State	Proceeds of sales to the State of Washington, its departments or institutions. Counties, cities, school districts and the like are not state departments or institutions	8,246	41
TOTAL amount of deductions as reported in column 4, page 1.....		$87,281	02

DETAIL OF OPERATIONS—By Location

This schedule must be completed by each taxpayer whose return includes business transacted at more than one location in the state. Give details for each store, plant or location in the state, including main store or plant.

BUSINESS LOCATIONS INCLUDED IN RETURN			Gross Amount	Deductions	Taxable Amount	Amount of Tax
Name Under Which Operated	Street and No. or R. F. D.	Postoffice				
The Pacific Telephone and Telegraph Company	1200 Third Avenue	Seattle Washington	$835,384 55	$87,281 02	$748,103 53	$22,443 11
Totals represent amounts reported on reverse side.....			$835,384 55	$87,281 02	$748,103 53	$22,443 11

The undersigned taxpayer declares that he has read the foregoing return and certifies it to be correct.

Dated this 4th day of June, , 193 4 Firm name The Pacific Telephone and Telegraph Company

By (Sd) I.F.Dix

Office or title Vice President

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If Additional Space is Needed, Attach Supplementary Sheets of This Size

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Mail One Copy to the Tax Commission of the State of Washington—Retain One Copy for Your Files

Form 3906

BUSINESS TAX RETURN

Chapter 181, Laws of Washington, 1933, and Amendments Thereto

MONTHLY RETURNS MUST BE MADE IF TAX LIABILITY EXCEEDS $10.00 PER MONTH

Use Only One Line

This Return for the Month of December **193** 3

OR

This Return for the Quarter Ending _____ **193**____

Remittances. Make remittance payable to TAX COMMISSION and mail it with this return to the BUSINESS TAX DIVISION, TAX COMMISSION OF THE STATE OF WASHINGTON, OLYMPIA, WASHINGTON, within 15 days after the close of the period covered. The law provides penalties for failure to file returns and make payments within the time specified.

BE SURE THAT NAME AND ADDRESS ARE CORRECT

File Number

Name: The Pacific Telephone and Telegraph Company

Street No.: 1200 Third Avenue,

City and State: Seattle, Washington.

This space for department use only

Remittance checked	File checked—Cash entry
Office review	Ledger checked
Audit—Office. Date	By
Audit—Field. Date	By
Final approval. Date	By

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WASHINGTON

Column 1 Taxable Activities	Column 2 Business Classification	Column 3 Gross Amount	Column 4 Deductions	Column 5 Taxable Amount	Col. 6 Rate	Column 7 Amount of Tax	Column 8 Do Not Use
Selling Tangible Property	* Retailing				.005		
	Wholesaling				.002		
Manufacturing	Manufacturing—All lines				.0025		
Extracting	Logging—Mining—Fishing				.003		
	Oil and Natural Gas				.01		
	Extracting Other Products				.003		
Public Service and Utilities	Steam Railways				.015		
	Electric Interurban and Street Railways Urban Automotive Transp't'n				.005		
	Light and Power—Water				.03		
	Telephone—Telegraph	$858,428 52	$90,711 17	$767,717.35	.03	$23,031 52	
	Manufactured Gas				.02		
	Express and/or Car Companies				.02		
	Highway Transportation				.015		
	Other Utilities				.015		
					.015		
Financial	Banks, Savings Assoc., etc.				.004		
	Stock Broker, Security House, Finance Co.				.02		
Amusement	Recreation and Amusement				.015		
Publishing, etc.	Outdoor Advertising				.01		
	Newspaper, Periodical Pub.				.0025		
	Radio Broadcasting				.01		
Service and Other Activities	* Professional, service and other businesses not included above				.005		

Total tax due for the period covered..... $23,031.52

* Persons, such as contractors, operators of garages, repair-shops, machine-shops and the like, engaging in business which combines the sale of tangible property with the rendition of service should report, under the line headed "Service and Other Activities," the gross income of the business, which includes gross proceeds of sales of tangible property as well as gross income from service charges, etc.

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READ INSTRUCTIONS CAREFULLY

Be Sure to Complete the Back of this Form

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DETAIL OF DEDUCTIONS

(From Summary shown in Column 4, reverse side)

Type of Deduction		Amount	
Trade Discounts	Trade discounts allowed and deducted by the seller		
Freight Out	Allowable to seller only, not to purchaser—Actual freight or delivery charges: (1) Paid to the carrier by the seller and invoiced to the purchaser as such, or (2) paid by the purchaser to the carrier (other than the seller) and deducted from the invoice price by the purchaser.		
Cash Discounts	Cash discounts actually allowed by the taxpayer and taken by the purchaser, if the amount thereof has been included in value of products, gross proceeds of sales or gross income reported for tax purposes.		
Motor Vehicle Fuel Tax	Amount collected by the taxpayer as an excise upon motor vehicle fuel (Gallons sold)		
	The following deductions are not allowable to persons taxable as manufacturers or extractors, measure of tax being "value of products"		
Interstate—Foreign	Proceeds of sales or income derived wholly in interstate or foreign commerce	$75,115	42
Sales to U. S. Gov't	Proceeds of sales to the United States Government, its departments or institutions	7,349	34
Sales to State	Proceeds of sales to the State of Washington, its departments or institutions. Counties, cities, school districts and the like are not state departments or institutions	8,246	41
TOTAL amount of deductions as reported in column 4, page 1		$90,711	17

DETAIL OF OPERATIONS—By Location

This schedule must be completed by each taxpayer whose return includes business transacted at more than one location in the state. Give details for each store, plant or location in the state, including main store or plant.

BUSINESS LOCATIONS INCLUDED IN RETURN			Gross Amount	Deductions	Taxable Amount	Amount of Tax
Name Under Which Operated	Street and No. or R. F. D.	Postoffice				
The Pacific Telephone and Telegraph Company	1200 Third Avenue	Seattle, Washington	$858,428 52	$90,711 17	$767,717 35	$23,031 52
Totals represent amounts reported on reverse side			$858,428 52	$90,711 17	$767,717 35	$23,031 52

The undersigned taxpayer declares that he has read the foregoing return and certifies it to be correct.

Dated this 4th day of June, 1934 Firm name The Pacific Telephone and Telegraph Company

By (Sd) I.F.Dix

Office or title Vice President

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If Additional Space is Needed, Attach Supplementary Sheets of This Size

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Mail One Copy to the Tax Commission of the State of Washington—Retain One Copy for Your Files

Form 3906

BUSINESS TAX RETURN

Chapter 191, Laws of Washington, 1933, and Amendments Thereto

MONTHLY RETURNS MUST BE MADE IF TAX LIABILITY EXCEEDS $10.00 PER MONTH

Use Only One Line

This Return for the Month of August **193** 3

OR

This Return for the Quarter Ending ____ **193** ____

Remittances. Make remittance payable to TAX COMMISSION and mail it with this return to the BUSINESS TAX DIVISION, TAX COMMISSION OF THE STATE OF WASHINGTON, OLYMPIA, WASHINGTON, within 15 days after the close of the period covered. The law provides penalties for failure to file returns and make payments within the time specified.

BE SURE THAT NAME AND ADDRESS ARE CORRECT

File Number

Name: The Home Telephone & Telegraph Company of Spokane

Street No.: 1200 Third Avenue

City and State: Seattle, Washington

This space for department use only

Remittance checked	File checked—Cash entry
Office review	Ledger checked
Audit—Office. Date	By
Audit—Field. Date	By
Final approval. Date	By

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WASHINGTON

Column 1 Taxable Activities	Column 2 Business Classification	Column 3 Gross Amount	Column 4 Deductions	Column 5 Taxable Amount	Col. 6 Rate	Column 7 Amount of Tax	Column 8 Do Not Use
Selling Tangible Property	* Retailing				.005		
	Wholesaling				.002		
Manufacturing	Manufacturing—All lines				.0025		
Extracting	Logging—Mining—Fishing				.003		
	Oil and Natural Gas				.01		
	Extracting Other Products				.003		
Public Service and Utilities	Steam Railways				.015		
	Electric Interurban and Street Railways Urban Automotive Transp't'n				.005		
	Light and Power—Water				.03		
	Telephone—Telegraph	$98,426 23	$4,233 24	$94,192 99	.03	$2,825.79	
	Manufactured Gas				.02		
	Express and/or Car Companies				.02		
	Highway Transportation				.015		
	Other Utilities ____				.015		
					.015		
Financial	Banks, Savings Assoc., etc.				.004		
	Stock Broker, Security House, Finance Co.				.02		
Amusement	Recreation and Amusement				.015		
Publishing, etc.	Outdoor Advertising				.01		
	Newspaper, Periodical Pub.				.0025		
	Radio Broadcasting				.01		
Service and Other Activities	* Professional, service and other businesses not included above				.005		
	Total tax due for the period covered.....					$2,825.79	

* Persons, such as contractors, operators of garages, repair-shops, machine-shops and the like, engaging in business which combines the sale of tangible property with the rendition of service should report, under the line headed "Service and Other Activities," the gross income of the business, which includes gross proceeds of sales of tangible property as well as gross income from service charges, etc.

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READ INSTRUCTIONS CAREFULLY

Be Sure to Complete the Back of this Form

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DETAIL OF DEDUCTIONS

(From Summary shown in Column 4, reverse side)

Type of Deduction		Amount	
Trade Discounts	Trade discounts allowed and deducted by the seller		
Freight Out	Allowable to seller only, not to purchaser—Actual freight or delivery charges: (1) Paid to the carrier by the seller and invoiced to the purchaser as such, or (2) paid by the purchaser to the carrier (other than the seller) and deducted from the invoice price by the purchaser.		
Cash Discounts	Cash discounts actually allowed by the taxpayer and taken by the purchaser, if the amount thereof has been included in value of products, gross proceeds of sales or gross income reported for tax purposes.		
Motor Vehicle Fuel Tax	Amount collected by the taxpayer as an excise upon motor vehicle fuel (Gallons sold)		
	The following deductions are not allowable to persons taxable as manufacturers or extractors, measure of tax being "value of products"		
Interstate—Foreign	Proceeds of sales or income derived wholly in interstate or foreign commerce	$2,503	24
Sales to U. S. Gov't	Proceeds of sales to the United States Government, its departments or institutions	1,620	00
Sales to State	Proceeds of sales to the State of Washington, its departments or institutions. Counties, cities, school districts and the like are not state departments or institutions	110	00
TOTAL amount of deductions as reported in column 4, page 1.....		$4,233	24

DETAIL OF OPERATIONS—By Location

This schedule must be completed by each taxpayer whose return includes business transacted at more than one location in the state. Give details for each store, plant or location in the state, including main store or plant.

BUSINESS LOCATIONS INCLUDED IN RETURN			Gross Amount		Deductions		Taxable Amount		Amount of Tax	
Name Under Which Operated	Street and No. or R. F. D.	Postoffice								
The Home Telephone & Telegraph Company of Spokane	1200 Third Avenue	Seattle, Washington	$98,426	23	$4,233	24	$94,192	99	$2,825	79
Totals represent amounts reported on reverse side.....			$98,426	23	$4,233	24	$94,192	99	$2,825	79

The undersigned taxpayer declares that he has read the foregoing return and certifies it to be correct.

Dated this 4th day of June, 1934 Firm name The Home Telephone & Telegraph Company of Spokane

By (Sd) I.F.DIX

Office or title Vice President

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If Additional Space is Needed, Attach Supplementary Sheets of This Size

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Mail One Copy to the Tax Commission of the State of Washington—Retain One Copy for Your Files

Form 3906

BUSINESS TAX RETURN

Chapter 191, Laws of Washington, 1933, and Amendments Thereto

MONTHLY RETURNS MUST BE MADE IF TAX LIABILITY EXCEEDS $10.00 PER MONTH

Use Only One Line

This Return for the Month of September **1933**

OR

This Return for the Quarter Ending ____ **193**

Remittances. Make remittance payable to TAX COMMISSION and mail it with this return to the BUSINESS TAX DIVISION, TAX COMMISSION OF THE STATE OF WASHINGTON, OLYMPIA, WASHINGTON, within 15 days after the close of the period covered.

The law provides penalties for failure to file returns and make payments within the time specified.

BE SURE THAT NAME AND ADDRESS ARE CORRECT

File Number

Name: The Home Telephone & Telegraph Company of Spokane

Street No.: 1200 Third Avenue,

City and State: Seattle, Washington.

This space for department use only

Remittance checked	File checked—Cash entry
Office review	Ledger checked
Audit—Office. Date	By
Audit—Field. Date	By
Final approval. Date	By

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WASHINGTON

Column 1 Taxable Activities	Column 2 Business Classification	Column 3 Gross Amount	Column 4 Deductions	Column 5 Taxable Amount	Col. 6 Rate	Column 7 Amount of Tax	Column 8 Do Not Use
Selling Tangible Property	* Retailing				.005		
	Wholesaling				.002		
Manufacturing	Manufacturing—All lines				.0025		
Extracting	Logging—Mining—Fishing				.003		
	Oil and Natural Gas				.01		
	Extracting Other Products				.003		
Public Service and Utilities	Steam Railways				.015		
	Electric Interurban and Street Railways Urban Automotive Transp't'n				.005		
	Light and Power—Water				.03		
	Telephone—Telegraph	$100,227 75	$4,161 24	$96,066 51	.03	$2,882 00	
	Manufactured Gas				.02		
	Express and/or Car Companies				.02		
	Highway Transportation				.015		
	Other Utilities				.015		
					.015		
Financial	Banks, Savings Assoc., etc.				.004		
	Stock Broker, Security House, Finance Co.				.02		
Amusement	Recreation and Amusement				.015		
Publishing, etc.	Outdoor Advertising				.01		
	Newspaper, Periodical Pub.				.0025		
	Radio Broadcasting				.01		
Service and Other Activities	* Professional, service and other businesses not included above				.005		
	Total tax due for the period covered.....					$2,882 00	

* Persons, such as contractors, operators of garages, repair-shops, machine-shops and the like, engaging in business which combines the sale of tangible property with the rendition of service should report, under the line headed "Service and Other Activities," the gross income of the business, which includes gross proceeds of sales of tangible property as well as gross income from service charges, etc.

READ INSTRUCTIONS CAREFULLY

Be Sure to Complete the Back of this Form

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DETAIL OF DEDUCTIONS

(From Summary shown in Column 4, reverse side)

Type of Deduction		Amount	
Trade Discounts	Trade discounts allowed and deducted by the seller		
Freight Out	Allowable to seller only, not to purchaser—Actual freight or delivery charges: (1) Paid to the carrier by the seller and invoiced to the purchaser as such, or (2) paid by the purchaser to the carrier (other than the seller) and deducted from the invoice price by the purchaser.		
Cash Discounts	Cash discounts actually allowed by the taxpayer and taken by the purchaser, if the amount thereof has been included in value of products, gross proceeds of sales or gross income reported for tax purposes.		
Motor Vehicle Fuel Tax	Amount collected by the taxpayer as an excise upon motor vehicle fuel (Gallons sold)		
	The following deductions are not allowable to persons taxable as manufacturers or extractors, measure of tax being "value of products"		
Interstate—Foreign	Proceeds of sales or income derived wholly in interstate or foreign commerce	$2,431	24
Sales to U. S. Gov't	Proceeds of sales to the United States Government, its departments or institutions	1,620	00
Sales to State	Proceeds of sales to the State of Washington, its departments or institutions. Counties, cities, school districts and the like are not state departments or institutions	110	00
TOTAL amount of deductions as reported in column 4, page 1		$4,161	24

DETAIL OF OPERATIONS—By Location

This schedule must be completed by each taxpayer whose return includes business transacted at more than one location in the state. Give details for each store, plant or location in the state, including main store or plant.

BUSINESS LOCATIONS INCLUDED IN RETURN			Gross Amount	Deductions	Taxable Amount	Amount of Tax
Name Under Which Operated	Street and No. or R. F. D.	Postoffice				
The Home Telephone & Telegraph Company of Spokane	1200 Third Avenue	Seattle, Washington	$100,227.75	$4,161 24	$96,066 51	$2,882 00
Totals represent amounts reported on reverse side			$100,227 75	$4,161 24	$96,066 51	$2,882 00

The undersigned taxpayer declares that he has read the foregoing return and certifies it to be correct.

Dated this 4th day of June, 1934 Firm name The Home Telephone & Telegraph Company of Spokane

By (Sd) I.F.Dix

Office or title Vice President

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If Additional Space is Needed, Attach Supplementary Sheets of This Size

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Mail One Copy to the Tax Commission of the State of Washington—Retain One Copy for Your Files

Form 3906

BUSINESS TAX RETURN

Chapter 191, Laws of Washington, 1933, and Amendments Thereto

MONTHLY RETURNS MUST BE MADE IF TAX LIABILITY EXCEEDS $10.00 PER MONTH

Use Only One Line

This Return for the Month of October **1933**

OR

This Return for the Quarter Ending _____ **193**

Remittances. Make remittance payable to TAX COMMISSION and mail it with this return to the BUSINESS TAX DIVISION, TAX COMMISSION OF THE STATE OF WASHINGTON, OLYMPIA, WASHINGTON, within 15 days after the close of the period covered.

The law provides penalties for failure to file returns and make payments within the time specified.

BE SURE THAT NAME AND ADDRESS ARE CORRECT

File Number

Name: The Home Telephone & Telegraph Company of Spokane,

Street No.: 1200 Third Avenue,

City and State: Seattle, Washington.

This space for department use only

Remittance checked	File checked—Cash ent'd
Office review	Ledger checked
Audit—Office. Date	By
Audit—Field. Date	By
Final approval. Date	By

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WASHINGTON

Column 1 Taxable Activities	Column 2 Business Classification	Column 3 Gross Amount	Column 4 Deductions	Column 5 Taxable Amount	Col. 6 Rate	Column 7 Amount of Tax	Column 8 Do Not Use
Selling Tangible Property	* Retailing				.005		
	Wholesaling				.002		
Manufacturing	Manufacturing—All lines				.0025		
Extracting	Logging—Mining—Fishing				.003		
	Oil and Natural Gas				.01		
	Extracting Other Products				.003		
Public Service and Utilities	Steam Railways				.015		
	Electric Interurban and Street Railways Urban Automotive Transp't'n				.005		
	Light and Power—Water				.03		
	Telephone—Telegraph	$100,866 96	$4,138 05	$96,728 91	.03	$2,901 87	
	Manufactured Gas				.02		
	Express and/or Car Companies				.02		
	Highway Transportation				.015		
	Other Utilities				.015		
					.015		
Financial	Banks, Savings Assoc., etc.				.004		
	Stock Broker, Security House, Finance Co.				.02		
Amusement	Recreation and Amusement				.015		
Publishing, etc.	Outdoor Advertising				.01		
	Newspaper, Periodical Pub.				.0025		
	Radio Broadcasting				.01		
Service and Other Activities	* Professional, service and other businesses not included above				.005		

Total tax due for the period covered..... $2,901 87

* Persons, such as contractors, operators of garages, repair-shops, machine-shops and the like, engaging in business which combines the sale of tangible property with the rendition of service should report, under the line headed "Service and Other Activities," the gross income of the business, which includes gross proceeds of sales of tangible property as well as gross income from service charges, etc.

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READ INSTRUCTIONS CAREFULLY

Be Sure to Complete the Back of this Form

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DETAIL OF DEDUCTIONS

(From Summary shown in Column 4, reverse side)

Type of Deduction		Amount	
Trade Discounts	Trade discounts allowed and deducted by the seller		
Freight Out	Allowable to seller only, not to purchaser—Actual freight or delivery charges: (1) Paid to the carrier by the seller and invoiced to the purchaser as such, or (2) paid by the purchaser to the carrier (other than the seller) and deducted from the invoice price by the purchaser.		
Cash Discounts	Cash discounts actually allowed by the taxpayer and taken by the purchaser, if the amount thereof has been included in value of products, gross proceeds of sales or gross income reported for tax purposes.		
Motor Vehicle Fuel Tax	Amount collected by the taxpayer as an excise upon motor vehicle fuel (Gallons sold)		
	The following deductions are not allowable to persons taxable as manufacturers or extractors, measure of tax being "value of products"		
Interstate—Foreign	Proceeds of sales or income derived wholly in interstate or foreign commerce	$2,408	05
Sales to U. S. Gov't	Proceeds of sales to the United States Government, its departments or institutions	1,620	00
Sales to State	Proceeds of sales to the State of Washington, its departments or institutions. Counties, cities, school districts and the like are not state departments or institutions	110	00
TOTAL amount of deductions as reported in column 4, page 1		$4,138	05

DETAIL OF OPERATIONS—By Location

This schedule must be completed by each taxpayer whose return includes business transacted at more than one location in the state. Give details for each store, plant or location in the state, including main store or plant.

BUSINESS LOCATIONS INCLUDED IN RETURN							
Name Under Which Operated	Street and No. or R. F. D.	Postoffice	Gross Amount	Deductions	Taxable Amount	Amount of Tax
The Home Telephone & Telegraph Company of Spokane	1200 Third Avenue	Seattle, Washington	$100,866 96	$4,138 05	$96,728 91	$2,901 87
Totals represent amounts reported on reverse side			$100,866 96	$4,138 05	$96,728 91	$2,901 87

The undersigned taxpayer declares that he has read the foregoing return and certifies it to be correct.

Dated this 4th day of June, 1934 Firm name The Home Telephone & Telegraph Company of Spokane

By (Sd) I.F.Dix

Office or title Vice President

If Additional Space is Needed, Attach Supplementary Sheets of This Size

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Mail One Copy to the Tax Commission of the State of Washington—Retain One Copy for Your Files

Form 3906

BUSINESS TAX RETURN

Chapter 191, Laws of Washington, 1933, and Amendments Thereto

MONTHLY RETURNS MUST BE MADE IF TAX LIABILITY EXCEEDS $10.00 PER MONTH

Use Only One Line

This Return for the Month of November 193 3

OR

This Return for the Quarter Ending 193

Remittances. Make remittance payable to TAX COMMISSION and mail it with this return to the BUSINESS TAX DIVISION, TAX COMMISSION OF THE STATE OF WASHINGTON, OLYMPIA, WASHINGTON, within 15 days after the close of the period covered. The law provides penalties for failure to file returns and make payments within the time specified.

BE SURE THAT NAME AND ADDRESS ARE CORRECT

Name	The Home Telephone & Telegraph Company (File Number)
Street No.	of Spokane 1200 Third Avenue,
City and State	Seattle, Washington.

This space for department use only

Remittance checked	File checked—Cash entry
Office review	Ledger checked
Audit—Office. Date	By
Audit—Field. Date	By
Final approval. Date	By

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WASHINGTON

Column 1 Taxable Activities	Column 2 Business Classification	Column 3 Gross Amount	Column 4 Deductions	Column 5 Taxable Amount	Col. 6 Rate	Column 7 Amount of Tax	Column 8 Do Not Use
Selling Tangible Property	* Retailing				.005		
	Wholesaling				.002		
Manufacturing	Manufacturing—All lines				.0025		
Extracting	Logging—Mining—Fishing				.003		
	Oil and Natural Gas				.01		
	Extracting Other Products				.003		
Public Service and Utilities	Steam Railways				.015		
	Electric Interurban and Street Railways Urban Automotive Transp't'n				.005		
	Light and Power—Water				.03		
	Telephone—Telegraph	$100,937 86	$4,251 98	$96,685 88	.03	$2,900 58	
	Manufactured Gas				.02		
	Express and/or Car Companies				.02		
	Highway Transportation				.015		
	Other Utilities				.015		
					.015		
Financial	Banks, Savings Assoc., etc.				.004		
	Stock Broker, Security House, Finance Co.				.02		
Amusement	Recreation and Amusement				.015		
Publishing, etc.	Outdoor Advertising				.01		
	Newspaper, Periodical Pub.				.0025		
	Radio Broadcasting				.01		
Service and Other Activities	* Professional, service and other businesses not included above				.005		

Total tax due for the period covered.... $2,900 58

* Persons, such as contractors, operators of garages, repair-shops, machine-shops and the like, engaging in business which combines the sale of tangible property with the rendition of service should report, under the line headed "Service and Other Activities," the gross income of the business, which includes gross proceeds of sales of tangible property as well as gross income from service charges, etc.

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READ INSTRUCTIONS CAREFULLY

Be Sure to Complete the Back of this Form

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DETAIL OF DEDUCTIONS

(From Summary shown in Column 4, reverse side)

Type of Deduction		Amount	
Trade Discounts	Trade discounts allowed and deducted by the seller		
Freight Out	Allowable to seller only not to purchaser—Actual freight or delivery charges: (1) Paid to the carrier by the seller and invoiced to the purchaser as such, or (2) paid by the purchaser to the carrier (other than the seller) and deducted from the invoice price by the purchaser.		
Cash Discounts	Cash discounts actually allowed by the taxpayer and taken by the purchaser, if the amount thereof has been included in value of products, gross proceeds of sales or gross income reported for tax purposes.		
Motor Vehicle Fuel Tax	Amount collected by the taxpayer as an excise upon motor vehicle fuel (Gallons sold)		
	The following deductions are not allowable to persons taxable as manufacturers or extractors, measure of tax being "value of products"		
Interstate—Foreign	Proceeds of sales or income derived wholly in interstate or foreign commerce	$2,521	98
Sales to U. S. Gov't	Proceeds of sales to the United States Government, its departments or institutions	1,620	00
Sales to State	Proceeds of sales to the State of Washington, its departments or institutions. Counties, cities, school districts and the like are not state departments or institutions	110	00
TOTAL amount of deductions as reported in column 4, page 1		$4,251	98

DETAIL OF OPERATIONS—By Location

This schedule must be completed by each taxpayer whose return includes business transacted at more than one location in the state. Give details for each store, plant or location in the state, including main store or plant.

BUSINESS LOCATIONS INCLUDED IN RETURN						
Name Under Which Operated	Street and No. or R. F. D.	Postoffice	Gross Amount	Deductions	Taxable Amount	Amount of Tax
The Home Telephone & Telegraph Company of Spokane	1200 Third Avenue	Seattle, Washington	$100,937 86	$4,251 98	$96,685 88	$2,900 58
Totals represent amounts reported on reverse side			$100,937 86	$4,251 98	$96,685 88	$2,900 58

The undersigned taxpayer declares that he has read the foregoing return and certifies it to be correct.

Dated this 4th day of June, 193 4

Firm name The Home Telephone & Telegraph Company of Spokane

By (Sd) I.F.Dix

Office or title Vice President

If Additional Space is Needed, Attach Supplementary Sheets of This Size

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Mail One Copy to the Tax Commission of the State of Washington—Retain One Copy for Your Files

Form 3906

BUSINESS TAX RETURN

Chapter 191, Laws of Washington, 1933, and Amendments Thereto

MONTHLY RETURNS MUST BE MADE IF TAX LIABILITY EXCEEDS $10.00 PER MONTH

Use Only One Line

This Return for the Month of December **1933**

OR

This Return for the Quarter Ending ..... **193**...

Remittances. Make remittance payable to TAX COMMISSION and mail it with this return to the BUSINESS TAX DIVISION, TAX COMMISSION OF THE STATE OF WASHINGTON, OLYMPIA, WASHINGTON, within 15 days after the close of the period covered. The law provides penalties for failure to file returns and make payments within the time specified.

BE SURE THAT NAME AND ADDRESS ARE CORRECT

File Number

Name: The Home Telephone & Telegraph Company of Spokane,

Street No.: 1200 Third Avenue,

City and State: Seattle, Washington.

This space for department use only

Remittance checked	File checked—Cash entry
Office review	Ledger checked
Audit—Office. Date	By
Audit—Field. Date	By
Final approval. Date	By

COMPUTATION OF TAX—BUSINESS CONDUCTED IN WASHINGTON

Column 1 Taxable Activities	Column 2 Business Classification	Column 3 Gross Amount	Column 4 Deductions	Column 5 Taxable Amount	Col. 6 Rate	Column 7 Amount of Tax	Column 8 Do Not Use
Selling Tangible Property	* Retailing				.005		
	Wholesaling				.002		
Manufacturing	Manufacturing—All lines				.0025		
Extracting	Logging—Mining—Fishing				.003		
	Oil and Natural Gas				.01		
	Extracting Other Products				.003		
Public Service and Utilities	Steam Railways				.015		
	Electric Interurban and Street Railways Urban Automotive Transp't'n				.005		
	Light and Power—Water				.03		
	Telephone—Telegraph	3101,132	7134,309	15 $96,823 56	.03	$2,904 71	
	Manufactured Gas				.02		
	Express and/or Car Companies				.02		
	Highway Transportation				.015		
	Other Utilities				.015		
					.015		
Financial	Banks, Savings Assoc., etc.				.004		
	Stock Broker, Security House, Finance Co.				.02		
Amusement	Recreation and Amusement				.015		
Publishing, etc.	Outdoor Advertising				.01		
	Newspaper, Periodical Pub.				.0025		
	Radio Broadcasting				.01		
Service and Other Activities	* Professional, service and other businesses not included above				.005		

Total tax due for the period covered..... $2,904 71

* Persons, such as contractors, operators of garages, repair-shops, machine-shops and the like, engaging in business which combines the sale of tangible property with the rendition of service should report, under the line headed "Service and Other Activities," the gross income of the business, which includes gross proceeds of sales of tangible property as well as gross income from service charges, etc.

READ INSTRUCTIONS CAREFULLY

Be Sure to Complete the Back of this Form

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149

DETAIL OF DEDUCTIONS

(From Summary shown in Column 4, reverse side).

Type of Deduction		Amount	
Trade Discounts	Trade discounts allowed and deducted by the seller		
Freight Out	Allowable to seller only, not to purchaser—Actual freight or delivery charges: (1) Paid to the carrier by the seller and invoiced to the purchaser as such, or (2) paid by the purchaser to the carrier (other than the seller) and deducted from the invoice price by the purchaser.		
Cash Discounts	Cash discounts actually allowed by the taxpayer and taken by the purchaser, if the amount thereof has been included in value of products, gross proceeds of sales or gross income reported for tax purposes.		
Motor Vehicle Fuel Tax	Amount collected by the taxpayer as an excise upon motor vehicle fuel (Gallons sold)		
	The following deductions are not allowable to persons taxable as manufacturers or extractors, measure of tax being "value of products"		
Interstate—Foreign	Proceeds of sales or income derived wholly in interstate or foreign commerce	$2,579	15
Sales to U. S. Gov't	Proceeds of sales to the United States Government, its departments or institutions	1,620	00
Sales to State	Proceeds of sales to the State of Washington, its departments or institutions. Counties, cities, school districts and the like are not state departments or institutions	110	00
TOTAL amount of deductions as reported in column 4, page 1		$4,309	15

DETAIL OF OPERATIONS—By Location

This schedule must be completed by each taxpayer whose return includes business transacted at more than one location in the state. Give details for each store, plant or location in the state, including main store or plant.

BUSINESS LOCATIONS INCLUDED IN RETURN			Gross Amount	Deductions	Taxable Amount	Amount of Tax
Name Under Which Operated	Street and No. or R. F. D.	Postoffice				
The Home Telephone & Telegraph Company of Spokane	1200 Third Avenue	Seattle, Washington	$101,132 71	$4,309 15	$96,823 56	$2,904. 71
Totals represent amounts reported on reverse side			$101,132 71	$4,309 15	$96,823 56	$2,904.71

The undersigned taxpayer declares that he has read the foregoing return and certifies it to be correct.

Dated this 4th day of June, 1934 Firm name The Home Telephone & Telegraph Company of Spokane

By (Sd) I.F.Dix

Office or title Vice President

If Additional Space is Needed, Attach Supplementary Sheets of This Size

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[fol. 259] IN SUPREME COURT OF WASHINGTON

No. 25618. En Banc

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, Respondent,

v.

THE TAX COMMISSION OF THE STATE OF WASHINGTON, and T. S. Hedges and T. M. Jenner, as Members of the Tax Commission of the State of Washington, Appellants

OPINION—Filed Aug. 13, 1935

This action was brought to restrain the tax commission of this state and the members thereof from enforcing chapter 191 of the Laws of 1933. After the action was instituted, the court granted a temporary injunction from which the defendants appealed, 80 Wash. Dec. 600, and the order was affirmed. Subsequently, the defendants answered, and the trial resulted in a permanent injunction restraining the defendants from enforcing the law above mentioned, from which they appeal.

The facts are sufficiently stated in the opinion upon the former appeal, and need not be here repeated. The respondent opens its argument, in its brief answering that of appellants, with certain "preliminary observations" which we do not deem of controlling importance. The principal and controlling questions are discussed and disposed of in the recent case of the State of Washington v. Northern Pacific Railway Co., — Wash. Dec. —, and upon the authority of that case the judgment of the superior court will be reversed, with directions to proceed in accordance with the law as found in the case referred to.

Main, J.

We concur: Mitchell, J. Blake, J. Beals, J. Geraghty, J.

[fol. 260] IN SUPREME COURT OF WASHINGTON

No. 25618

DISSENTING OPINION

STEINERT, J., dissenting:

For the reasons given in State v. Northern Pacific Railway Company, ante p. —, — P. (2d) —, I dissent.

Steinert, J.

I concur: Holcomb, J.

[fol. 261] IN SUPREME COURT OF WASHINGTON

No. 25684. En Banc

THE STATE OF WASHINGTON, Appellant,

v.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Respondent

OPINION—Filed Aug. 13, 1935

This action was brought to recover the tax on the gross income of the defendant, imposed by chapter 191, Laws of 1933, for the months of August to December, 1933. The cause was tried to the court without a jury, and resulted in findings of fact from which the court concluded that the plaintiff was not entitled to recover. Judgment was entered dismissing the action, from which the plaintiff, the state of Washington, appeals.

The respondent owns and operates a system of railroad extending from a point on Lake Superior, Wisconsin, through Minnesota, North Dakota, Montana and Idaho, into and through a number of counties in this state, with branch lines into the state of Oregon and British Columbia. It is engaged in both intrastate and interstate commerce, carrying freight and passengers. As found by the trial court, the interstate and intrastate business in this state is inextricably commingled, and the intrastate business is conducted at a loss, and it is necessary to make up this loss from the income from interstate business.

Chapter 191 of the Laws of 1933 is entitled an act relating to taxation, and imposes taxes upon the privilege of engaging in business activities in this state. The amount of the tax is based upon the gross income. In section 2 of [fol. 262] the act, it is provided that:

"From and after the first day of August, 1933, and until the Thirty-first day of July, 1935, there is hereby levied and there shall be collected from every person an annual tax or excise for the privilege of engaging in business activities. Such tax or excise shall be measured by the application of rates against values, gross proceeds of sales, or gross income, as the case may be, as follows: * * * (e) Upon every person engaging or continuing within this state in the following businesses; as to such persons the amount of tax or excise shall be equal to the gross income of the business multiplied by the rate set out after the business, as follows: * * * III. Steam railways: one and one-half per cent. * * *"

It is under this act that the tax in question was sought to be collected by the state and which was resisted by the respondent railway company, as above indicated.

The first question is whether the legislature intended to levy the tax upon the gross income of the respondent, derived from both interstate and intrastate commerce. In the portion of the act quoted, it will be observed that it is provided that the tax is levied upon every person "engaging or continuing within this state in the following businesses." This quoted expression is used, not only in referring to the tax upon steam railways, but upon the other businesses mentioned in the act which are purely of a local nature. If it was the legislative intent to levy the tax upon the gross income from interstate commerce, it would necessarily, to that extent, be unconstitutional as being repugnant to the commerce clause of the federal constitution. About this there can be no question, as it has been many times so held by the federal supreme court.

In State v. Northern Express Co., 80 Wash. 309, 141 Pac. 757, there was involved an act of the legislature which imposed upon express companies a privilege tax of five per [fol. 263] cent, based upon the gross receipts of such companies. In that case, the expression used was that the tax was imposed for the privilege of "doing business in this

state'' or on ''business done within the state of Washington.'' It was there held that the expressions used had reference to business begun and ended within this state, and that the tax, being upon intrastate commerce only, did not place a burden upon interstate commerce. It was there said:

''The phrase 'gross receipts of such express company for business done within the state of Washington,' to which the tax is alone applicable, is an expression of the legislative intent to limit this tax to business wholly within this state; that is, business begun and ended within this state.''

It will be observed that, there, the expression was business done within this state or within the state of Washington. In the case we are now considering, the expression is ''engaging or continuing within this state'' in business. It is probably true that the expression used, which was involved in the case cited, more clearly indicates a legislative intent not to impose the tax upon interstate commerce than does the expression used in chapter 191, Laws of 1933. However this may be, when we read the expression used in that chapter, not only as applied to a business which is both interstate and intrastate, but its repeated application to businesses which are purely local, it would seem that the legislative intent was reasonably plain, and that the purpose was not to impose the tax upon interstate business, but upon intrastate or local business only. If it be that the expression used leaves the matter in the zone of doubt, then that doubt should be resolved in favor of the constitutionality of the law. In such a case, the construction will be adopted which will harmonize the statute with the constitution and avoid a conflict therewith. Robb v. Tacoma, 175 Wash. 580, 28 P. (2d) 327.

[fol. 264] That a state, through its legislature, has no power to levy a tax which would be a direct burden upon interstate commerce is well known and understood by all lawyers and many laymen. For the court to hold that the legislature, in enacting chapter 191, intended to impose the excise tax therein provided for for the privilege of doing interstate business in this state, would be too great a reflection upon the intelligence of the members of a coordinate branch of the state government. The act, as we view

it, was only intended to apply to local or intrastate business.

The next and, as we view it, the important and difficult question is whether the tax may be collected, even though the railway company, the respondent, may not be able to retire from its intrastate business without also discontinuing its interstate. In this connection, it will be assumed (a) that the respondent cannot, as a matter of law, retire from its intrastate business; (b) that it is impractical, as a matter of fact, for it to retire from its intrastate business without also retiring from its interstate; and (c) that the intrastate or local business is conducted at a loss which is taken care of by the receipts from the interstate business. Giving effect to these assumptions, inquiry must be directed then to whether the tax is valid, even though the railway company may not be able to retire from its intrastate business without retiring from its interstate, and that the intrastate business is conducted at a loss.

In the case of Sprout v. City of South Bend, 277 U. S. 163, the court had before it an ordinance of the city, in the state of Indiana, which prescribed license fees varying in amount depending upon the seating capacity of a bus, the bus company being engaged in both intrastate and inter- [fol. 265] state business and it was there held that "the ordinance is void because of the imposition of the license fee." In the course of the opinion, it was said that a state may, by appropriate legislation, require the payment of an occupation tax from one engaged in both intrastate and interstate commerce, but, in order that the fee or tax may be valid,

"• • • it must appear that it is imposed solely on account of the intrastate business; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be subject to the imposition; and that the person taxed could discontinue the intrastate business without withdrawing also from the interstate business."

It will be observed that one of the conditions there placed upon the right of a state to impose the tax is that the person or corporation taxed "could discontinue the intrastate business without withdrawing also from the interstate busi-

ness." This last quoted expression, so far as we are informed, was first used in the case of Pullman v. Adams, 189 U. S. 420, where the tax involved was in a specific amount, levied upon "each sleeping and palace-car company carrying passengers from one point to another within the State, one hundred dollars, and twenty-five cents per mile for each mile of railroad-track over which the company runs its cars."

In the case of Cooney v. Mountain States Telephone & Telegraph Co., Vol. 79, No. 9, United States Supreme Court Law ed. Advance Opinions, page 498, there was involved a statute of the state of Montana prescribing a tax "for each telephone instrument used in the conduct of the business of operating or maintaining telephone lines and furnishing telephone service in the State of Montana." There, the telephone company, as is the railroad company here, engaged in both intrastate and interstate business, and it was [fol. 266] held that a privilege or occupation tax which a state imposes with reference to both kinds of business, through an indiscriminate "application to instrumentalities common to both sorts of commerce, has frequently been held to be invalid."

It will be observed that in none of the three cases mentioned was the tax based upon the gross income of the intrastate business. There is a difference between a tax imposed as a license to do business or upon the instrumentality and a tax based upon the gross income. If the tax be a license tax or one upon the instrumentality, it necessarily inheres in the interstate as well as the intrastate business. Where the tax is upon the gross income, the income from the interstate business may be segregated from the intrastate and be held valid.

In the case of Bowman v. Continental Oil Co., 256 U. S. 642, the state of New Mexico had imposed an excise tax of two cents for each gallon of gasoline sold or used, and an annual license tax of fifty dollars for each distributing station or place of business. The oil company was engaged in both interstate and intrastate business. It was held that the two cents tax per gallon could be sustained because the income ffom the intrastate business could be segregated from the interstate, but that the fifty dollar tax was void because no sueh segregation could be made. It was there said:

"The applicable rule is that laid down in Ratterman v. Western Union Telegraph Co., 127 U. S. 411, where, in response to a question whether a single tax, assessed by a state upon the receipts of a telegraph company derived partly from interstate commerce and partly from commerce within the State, but returned and assessed in gross and without separation or apportionment, was wholly invalid or invalid only in proportion and to the extent that the receipts were derived from interstate commerce, this court unanimously answered that so far as levied upon receipts derived from interstate commerce the tax was void, but so [fol. 267] far as levied upon receipts from commerce wholly within the State it was valid. This case has been cited repeatedly with approval and its principle accepted. Western Union Telegraph v. Alabama, 132 U. S. 472, 476-477; Lehigh Valley R. R. Co. v. Pennsylvania, 145 U. S. 192, 200-201; Postal Telegraph Cable Co. v. Charleston, 153 U. S. 692, 697; Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 31.

"But with the license tax it is otherwise. If the statute is inseparable, then both by its terms and by its legal operation and effect this tax is imposed generally upon the entire business conducted, including interstate commerce as well as domestic; and the tax is void under the authority of Leloup v. Port of Mobile, 127 U. S. 640, 647; Crutcher v. Kentucky, 141 U. S. 47, 58-59; Williams v. Talladega, 226 U. S. 404, 419; and other cases of that character."

In the case of Cooney v. Mountain States Telephone & Telegraph Co., supra, it was distinctly pointed out that the tax there involved was "not laid on revenue derived from monthly rates as distinguished from toll charges. It is not imposed with respect either to the nature of the revenue, or to the character of the service from which the revenue is derived, or to the manner in which the charges for the services are fixed." From what is there said it would appear to be a reasonable inference that, if the tax were of the character described in the quotation just made from the opinion, the result might be different.

In East Ohio Gas Co. v. Tax Commission, 283, U. S. 465, the state of Ohio imposed upon every corporation engaged in the business of supplying consumers within the state with natural gas for light, heat or power a tax based upon

the gross receipts, and the law was sustained. The East Ohio Gas Company which resisted the tax was engaged both in interstate and intrastate business. It brought gas from the states of West Virginia and Pennsylvania over high pressure pipes, and, as stated in the opinion, this was interstate commerce until it reached the distributing pipes which supplied the consumers, and after that it became intrastate and was subject to the tax. In the course of [fol. 268] the opinion in that case, we find the same statement with reference to the conditions precedent to the right of a state to impose a tax upon a person or corporation engaged in both intrastate and interstate business, as appears in the quotation from the case of Sprout v. City of South Bend, supra. In the Ohio Gas Company case, however, the court did not apply the provision that the gas company could not retire from its intrastate business without withdrawing from its interstate business. The facts, as they appear in the opinion, make it plain that, if the gas company had withdrawn from its intrastate business, it would have completely destroyed its interstate business. The tax there involved was not one upon the instrumentality or a license tax, but was an excise or a tax upon the privilege of doing business. The result of the holding in that case, as we view it, would sustain a holding in the case now before us that the tax upon the gross income of the intrastate business was valid, even though the railway company could not withdraw from that business without also withdrawing from its interstate business. We do not look upon cases which involve either a tax upon instrumentalities or a license tax as applicable to the law now in question which imposes, as already indicated, an excise or tax on the privilege of engaging or continuing in business.

It must be remembered that chapter 191 of the Laws of 1933 applies to every person engaging or continuing in business within this state, with a comparatively few exceptions. The law may be said to be a general one and applies to all businesses within the state. In this respect, it is somewhat analogous to a property tax which all persons, with comparatively few exceptions provided for in the statute, are required to pay upon the property owned [fol. 269] by them. The state has the authority to tax property which is used in interstate commerce and which is regularly and permanently located within its limits, where

the ascertainment of the amount assessed is dependent upon the value of the property within the state, as the property of other citizens is taxed. Leloup v. Port of Mobile, 127 U. S. 640; Western Union Telegraph Co. v. Kansas, 216 U. S. 1.

Even though the respondent in this case cannot retire from its intrastate business without also retiring from its interstate business, we think that the excise tax imposed upon the gross income from the intrastate business is not such a direct burden upon interstate commerce as to require that the tax be held void.

Attention at this point should be called to chapter 4 of the Laws of 1933, which was Initiative Measure 64, and generally referred to as the "40-mill tax limit for taxation" law. In that act, it was provided that the aggregate of all taxes upon real and personal property in the state should not exceed in any one year forty mills on the dollar of assessment valuation, which should be based upon fifty per cent of the true and fair value of the property in money, with some exceptions which are not here material. The respondent, by reason of this law, has been relieved from paying a very large sum of money as taxes upon the property which it owns in this state and which was subject to taxation, even though devoted to interstate commerce. It is a matter of common knowledge that under the 40-mill tax limit law property is now paying about half of what it paid for general taxes prior to the passage of that law; in other words, that by reason of the law limiting the amount to forty mills, the tax burden upon both real and personal property of the state has been reduced approxi- [fol. 270] mately one-half. Having thus provided for a reduction of taxes upon real and personal property, it was necessary for the legislature to find other sources of revenue, and chapter 191 was undoubtedly passed for this reason.

So far as we are informed, the federal supreme court has at no time distinctly held that an excise tax, such as that of this state, which is imposed upon all businesses, is such a direct burden upon interstate commerce as to render the act of the legislature unconstitutional.

But it is said that the intrastate business is being conducted at a loss, and this loss must be borne by the interstate business and therefore is a burden upon interstate

commerce. There is an expression in the case of Postal Telegraph-Cable Co. v. Richmond, 249 U. S. 252, that would appear to support this contention, even though the question was not necessarily involved in that case; and further, in that case there was not involved an excise tax based upon gross income, as here.

In this state, if the respondent's intrastate business is conducted at a loss, the legislature has provided a remedy, first, by application to the department of public service, with the right of review by the superior court and an appeal to this court. From the findings, it appears that an application has been made and denied by the department and that another application is pending. It does not appear, however, that the respondent has exhausted the relief granted by the statute and until it does so, it cannot be said that, even though the intrastate business is being conducted at a loss, it is such a burden upon interstate commerce as would justify holding the law unconstitutional.

The facts in the case of Postal Telegraph-Cable Co. v. [fol. 271] Fremont, 255 U. S. 124, presented a similar question, and it was there held that, where the state law affords a means to prevent the tax from burdening interstate commerce, through an application to increase intrastate rates, the tax will not be held void, in the absence of a showing that the company had exhausted the remedy afforded by an increase of the rates on intrastate business. We see no just or legal reason why the respondent should not comply with chapter 191, as all other businesses in this state are required to do.

So far as the opinion in the case of Great Northern Railway Co. v. State, 147 Wash. 630, 267 Pac. 506, is out of harmony with the holding in this case, it will be disapproved.

The trial court in Finding No. 4 specifically found the gross revenue from the respondents' intrastate business and the tax thereon for the period covered by this action. The appellant is entitled to a judgment for the amount as indicated in the finding.

The judgment appealed from will be reversed and the cause remanded, with directions to the superior court to enter a judgment as herein indicated.

We concur: Mitchell, J. Tolman, J. Blake, J. Main, J. Beals, J. Geraghty, J.

[fol. 272] IN SUPREME COURT OF WASHINGTON

No. 25684

DISSENTING OPINION

STEINERT, J., dissenting:

I do not agree with the majority upon what is said to be the principal question in the case. Having conceded (a) that the respondent cannot, as a matter of law, retire from its intrastate business, (b) that it is impracticable, as a matter of fact, to so retire without also retiring from its interstate business, and (c) that the intrastate, or local, business is conducted at a loss which is taken care of by the receipts from the interstate business, the majority arrives at a conclusion which I think is incorrect and untenable.

The authorities cited in the prevailing opinion establish beyond question, as I view it, that the state may not impose a tax, no matter what its nature or variety may be, that has the effect of burdening or interfering with interstate commerce.

In Bowman v. Continental Oil Co., 256 U. S. 642, the court said:

"No doubt the state might impose a license tax upon the distribution and sale of gasoline in domestic commerce if it did not make its payment a condition of carrying on interstate or foreign commerce. But the state has not done this by any act of legislation. Its executive and administrative officials have disavowed a purpose to exact payment of the license tax for the privilege of carrying on interstate commerce. But the difficulty is that, since plaintiff, so far as appears, necessarily conducts its interstate and domestic commerce in gasoline indiscriminately at the same stations and by the same agencies, the license tax cannot be enforced at all without interfering with interstate commerce unless it be enforced otherwise than as prescribed by the statute, that is to say, without authority of law. Hence, it cannot be enforced at all."

In East Ohio Gas Co. v. Tax Commission, 283 U. S. 465, the court said:

[fol. 273] "And while a state may require payment of an occupation tax by one engaged in both intrastate and inter-

state commerce, the exaction in order to be valid must be imposed solely on account of the intrastate business without enhancement because of the interstate business done, and it must appear that one engaged exclusively in interstate business would not be subject to the imposition and that the taxpayer could discontinue the intrastate business without withdrawing also from the interstate business."

In Cooney v. Mountain States Tel. & Tel. Co., — U. S. —, 55 S. Ct. Rep. 477, 482, the court through Chief Justice Hughes, said:

"Where the tax is exacted from one doing both an interstate and intrastate business, it must appear that it is imposed solely on account of the latter; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be subject to the tax; and that the one who is taxed could discontinue the intrastate business without also withdrawing from the interstate business. Sprout v. South Bend, Ind., 277 U. S. 163, 171, 48 S. Ct. 502, 72 L. Ed. 833, 62 A. L. R. 45; East Ohio Gas Co. v. Tax Commission, 283 U. S. 465, 470, 51 S. Ct. 499; 75 L. Ed. 1171."

The other cases cited in the prevailing opinion are either directly, or argumentatively, to the same effect. Under these cases, one of the essentials to the validity of a tax is that the one who is taxed could discontinue its intrastate business without also withdrawing from its interstate business.

The majority seek to make a distinction between a tax imposed as a license to do business or one upon the instrumentalities used, and a tax on gross income. They concede that a license tax to do business or a tax upon the instrumentality inheres in the interstate as well as in the intrastate business, but they hold that "where the tax is upon the gross income, the income from the interstate business may be segregated from the intrastate and be held valid." The distinction is without substance when the result in a given instance is to burden or interfere with interstate commerce. The federal government having created a field within its exclusive regulatory jurisdiction, the state may [fol. 274] not invade it, nor by any act, direct or indirect, interfere with it.

We have before us four cases, including the instant one, involving the same question. The other three are State v. Great Northern Ry. Co., post p. —, —, P. (2d) —, Pacific Tel. & Tel. Co. v. Tax Commission, post p. —, — P. 2d) —, and Home Tel. & Tel. Co. v. Tax Commission, post p. —, —, P. (2d) —. The questions being identical in all four, the same barrier exists in each against the state's right to tax. That the action of the state will interfere with interstate commerce is, to me, very apparent. If the railroad companies or the telephone companies should be permitted or be compelled to withdraw from their intrastate business, how many trains would continue to run, and how many telephones would remain in place, in this state, merely for the purpose of enabling their users to do an interstate business? Not only would all local service be discontinued, but, with the exception, possibly, of one or two large cities, the people of the state would be without interstate service as well.

If, as a matter of law, the companies may not withdraw from intrastate business, or if, as a matter of fact, it is wholly impracticable for them to do so, then such intrastate business must continue to be operated at the expense of their interstate business. If one state be permitted to impose burdens upon interstate commerce through the medium of taxation, then all states in which the companies operate may do likewise, and the accumulated burdens thus imposed would in the end result in complete strangulation of all their interstate commerce. The sum and substance of it all is that the tax imposed on intrastate business must be borne by the proceeds from interstate business.

[fol. 275] It is therefore, a burden upon, and interference with interstate commerce, and for that reason is invalid.

I therefore dissent.

Steinert, J.

[fol. 276] IN SUPREME COURT OF WASHINGTON

No. 25684

DISSENTING OPINION

HOLCOMB, J., dissenting:

I concur in the views stated by Judge Steinert in the above entitled case and as to all the other like cases now pending in this court.

I wish to add, however, that I particularly deplore the indefinite, unnecessary and summary disposition of the case of Great Northern Railway Co. v. State, 147 Wash. 630, 267 Pac. 506. It leaves that case like Mahomet's coffin, suspended midway between Heaven and earth; and, as Mr. Justice Holmes once said in one of his famous dissenting opinions, henceforth, neither bench nor bar can tell whether certain cases alluded to in the majority opinion therein, in much the same way as is the above cited case in the prevailing opinion in these cases, "are to be listed in the *index expurgatorius*" or, are in the category of cases to be used in the future at pleasure.

The above cited case was the deliberate judgment of this court en banc and concurred in by all but two of the then judges of this bench, including the writer of the opinion in the instant case. It followed the decisions of the Federal Supreme Court therein cited. It was based upon the sound principle that a public utility, such as the railway company, the telephone company and the like, is compelled by law to serve and cannot withdraw. To the same effect is Northern Pacific Railway Co. v. State, 84 Wash. 510, 147 Pac. 45.

It is manifest that these utilities cannot separate the receipts of their intrastate from their interstate business. If that be true, then it is indubitably true that the taxes in question are burdens upon interstate commerce, contravening the commerce clause and the Fourteenth Amendment of the Federal Constitution to which we are fully bound by oath to conform.

Holcomb, J.

[fol. 277] IN SUPREME COURT OF WASHINGTON

No. 25618. En Banc

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a Corporation, Respondent,

v.

THE TAX COMMISSION OF THE STATE OF WASHINGTON, and T. S. HEDGES and T. M. JENNER, as members of the Tax Commission of the State of Washington, Appellants.

ORDER CORRECTING OPINION—Filed Aug 28, 1935.

Per CURIAM:

Our attention has been called to an error in the concluding part of this opinion. The order there given is for reversal with direction to proceed in accordance with the law as found in the case referred to, when it should have been an order for reversal with direction to dismiss the action. Therefore, the last sentence in the opinion which reads:

"The principal and controlling questions are discussed and disposed of in the recent case of the State of Washington v. Northern Pacific Railway Co.,—Wash. Dec—, and upon the authority of that case the judgment of the superior court will be reversed, with directions to proceed in accordance with the law as found in the case referred to;"

will be stricken therefrom and held for naught, and there is hereby substituted in its place this:

"The principal and controlling questions are discussed and disposed of in the recent case of the State of Washington v. Northern Pacific Railway Co., — Wash. Dec. —, and upon the authority of that case the judgment will be reversed and the cause remanded, with direction to the superior court to dismiss the action."

(Here follows 1 photolithograph, folio 278.)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

May SESSION A. D. 1935

BE IT REMEMBERED, That at a regular session of the Supreme Court of the State of Washington begun and holden at Olympia on the second Monday of May, A. D. 19 35, it being the thirteenth day of said month, among other, the following was had and done, to-wit:

Monday, August 31st, 1935

Recorded In Vol. 34 page 36

JUDGMENT

No. 25618

The Pacific Telephone and Telegraph Company, a corporation,

Respondent

vs.

The Tax Commission of the State of Washington, and T.S.Hedges and T.M.Jenner, as members of the Tax Commission of the State of Washington,

Appellants.

Thurston County No. 15282

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Thurston County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 31st day of August, A. D. 19 35, on motion of G.W.Hamilton, Attorney General, and R.G.Sharpe, Assistant Attorney General, of counsel for appellants,

considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby reversed with costs; and the cause remanded, with directions to the Superior Court to dismiss the action, and that the said Tax Commission of the State of Washington, and T.S.Hedges and T.M.Jenner, as members thereof,

have and recover of and from the said Pacific Telephone and Telegraph Company,

the costs of this action taxed and allowed at Two Hundred Fourteen and 50/100 ($214.50) Dollars, and that execution issue therefor.

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166A

[fol. 279] [File endorsement omitted.]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted.]

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON TO THE SUPREME COURT OF THE UNITED STATES—Filed Aug. 31, 1935

To the Chief Justice of the Supreme Court of the State of Washington:

The Pacific Telephone and Telegraph Company, a California corporation, your petitioner, respectfully shows:

I

Your petitioner is the appellant in the above entitled cause.

II

Your petitioner filed an amended complaint in the Superior Court of the State of Washington, for Thurston County, on the 28th day of May, 1934, asking for an injunction against the appellees above named, restraining them from enforcing, as against this petitioner, Chapter 191 of the Laws of Washington, passed at the 23rd regular session in 1933, upon the ground that said Chapter 191 was violative of the Constitution of the United States and of the Acts of Congress regulating interstate commerce. The grounds on which said Chapter 191 of the Session Laws of Washington of 1933 is claimed to be invalid by this petitioner are all more particularly set forth in paragraph [fol. 280] XIII of the said amended complaint.

III

The appellees appeared in the said Superior Court and filed an answer. That thereafter, to-wit, on January 9, 1935, a trial was had in said Superior Court upon the issues made by said amended complaint and the answer thereto. That on the 11th day of March, 1935, the Honorable D. F. Wright, one of the judges of said Superior Court, signed a decree declaring that the tax imposed upon your

petitioner by said Chapter 191 of the Session Laws of Washington of 1933 was in violation of Article I, Section 8, of the Constitution of the United States, and of the Fourteenth Amendment to the Constitution of the United States, and permanently enjoining the appellees above named from enforcing against your petitioner any of the provisions of said Chapter 191 of the Session Laws of Washington of 1933. That the appellees, at the time of the entry of said decree on March 11, 1935, gave notice in open court that they, and each of them, appealed from said decree, and the whole thereof, to the Supreme Court of the State of Washington. That on August 13, 1935, the Supreme Court of the State of Washington rendered an opinion reversing the said Superior Court of Thurston County and holding valid, as to your petitioner, the provisions of said Chapter 191 of the Session Laws of Washington of 1933. That thereafter, to-wit, on the 28th day of August, 1935, the Supreme Court of the State of Washington filed an opinion directing that the suit brought by your petitioner as aforesaid in the Superior Court of the State of Washington, for Thurston County, be dismissed. That on the 31st day of August, 1935, final judgment of the said Supreme Court of the State of Washington directing the dismissal of the suit brought [fol. 281] as aforesaid by your petitioner in the Superior Court for Thurston County was entered.

IV

That the said Supreme Court of the State of Washington is the highest court of said state in which a decision can be had upon the matters alleged by your petitioner in this suit.

V

That in said cause there is drawn in question the validity of a statute of the State of Washington, being Chapter 191 of the Session Laws of Washington of 1933, on the ground that the said statute is repugnant to the Constitution and Laws of the United States, and the decision is in favor of its validity, notwithstanding your petitioner's contention that the said statute violates Article I, Section 8, of the Constitution of the United States, the due process clause of the Fourteenth Amendment to the Constitution of the United States, and the acts of Congress regulating interstate commerce.

VI

That, therefore, in accordance with the Judicial Code, Section 237(a) (U. S. C., Title 28, Section 344), and in accordance with the Rules of the Supreme Court of the United States (Rule 46, Par. 2), your petitioner respectfully shows this court that the case is one in which, under the legislation in force when the Act of January 31, 1928 (45 stat. 54), was passed, to-wit, under Section 237(a) of the Judicial Code (U. S. C., Title 28, Section 344), a review could be had in the Supreme Court of the United States on writ of error, as a matter of right.

[fol. 282] VII

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assignment of errors filed herewith pursuant to Rules 9 and 46 of the Supreme Court of the United States; and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

Wherefore, your petitioner prays for the allowance of an appeal from the said Supreme Court of the State of Washington, the highest court of said state in which a decision can be had, to the Supreme Court of the United States, in order that the decision and final judgment of the said Supreme Court of the State of Washington may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the clerk of the Supreme Court of the State of Washington under his hand and the seal of the said court, may be sent to the Supreme Court of the United States, as provided by law, and that said appeal may operate as a supersedeas, and that an order be made touching the security to be required of the petitioner, and that the supersedeas bond tendered by the petitioner be approved.

Maurice McMicken, H. J. Ramsey, Otto B. Rupp, Alfred J. Schweppe, Attorneys for Petitioner, 657-671 Colman Building, Seattle, Washington.

[fol. 283] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed Aug. 31, 1935

Statement

The pleadings admit that the petitioner owns and operates a telephone and telegraph system in the State of Washington and in the states of California, Oregon, and a part of Idaho, and that petitioner furnishes to the public therein telephone exchange service and both intrastate and interstate telephone toll service and telegraph service. The Supreme Court of the State of Washington found that petitioner "cannot, as a matter of law, retire from its intrastate business." That court also found that "it is impractical, as a matter of fact, for it (the petitioner) to retire from its intrastate business without also retiring from its interstate business."

Assignment of Errors

The petitioner, The Pacific Telephone and Telegraph Company, a corporation, assigns the following errors in the records and proceedings in this cause:

[fol. 284] 1. It being an admitted fact that petitioner is engaged in both intrastate and interstate commerce, and the Supreme Court of the State of Washington having held that your petitioner "cannot, as a matter of law, retire from its intrastate business," while continuing its interstate business, that court erred in holding that Chapter 191 of the Laws of Washington of 1933, in so far as it seeks to impose a privilege tax upon an interstate carrier on account of local business, does not violate the commerce clause, viz., Article I, Section 8, of the Constitution of the United States.

2. The Supreme Court of the State of Washington having determined that your petitioner "cannot, as a matter of law, retire from its intrastate business," that court erred in refusing to hold that Chapter 191 of the Laws of Wash-

ington of 1933, in attempting to impose a "privilege tax" on intrastate business which your petitioner is not free to renounce, violates the due process clause of the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of the State of Washington having found that petitioner's interstate and intrastate business in Washington is inextricably commingled, and that, as a matter of fact and as a practical matter, petitioner cannot withdraw from its intrastate business without also withdrawing from its interstate business, erred in holding that Chapter 191, Laws of Washington of 1933, does not violate the commerce clause, viz., Article I, Section 8, of the Constitution of the United States.

[fol. 285] Wherefore, on account of the errors hereinbefore assigned, petitioner prays that the said judgment of the Supreme Court of the State of Washington, dated the 31st day of August, 1935, in the above entitled cause, be reversed and judgment rendered in favor of this appellant.

Dated this 31st day of August, 1935.

Maurice McMicken, H. J. Ramsey, Otto B. Rupp, Alfred J. Schweppe, Counsel for Appellant, 657-671 Colman Building, Seattle, Washington.

[fol. 286] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed Aug. 31, 1935

The petition of The Pacific Telephone and Telegraph Company, the appellant in the above entitled action, for an appeal in the above cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Washington, having been presented herein, accompanied by assignments of errors and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered;

It is hereby ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the

final judgment of the Supreme Court of the State of Washington on August 31st, 1935, as prayed in said petition, and that the Clerk of the Supreme Court of the State of Washington shall, within sixty days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of the court, a true copy of the [fol. 287] material parts of the record herein, which shall be designated by a præcipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered that the said appellant shall give a good and sufficient supersedeas bond, in the sum of Twenty-five Thousand Dollars ($25,000.00), that said appellant shall prosecute said appeal to effect, and answer all damages and costs if it fails to make its plea good; and that said supersedeas bond, when filed and approved, shall stay the sending down to the Superior Court of the remittitur herein and of all proceedings in this cause, and the enforcement of Chapter 191 of the Session Laws of Washington of 1933, or any part thereof, against appellant, until the final disposition of this cause by the Supreme Court of the United States.

Done in open court this 31st day of August, 1935.

John F. Main, Acting Chief Justice of the Supreme Court of the State of Washington.

[fols. 288-290] Supersedeas bond on appeal for $25,000, approved and filed Aug. 31, 1935, omitted in printing.

[fols. 291 & 292] Citation, in usual form, showing service on G. W. Hamilton et al., filed Aug. 31, 1935, omitted in printing.

[fol. 293] In Supreme Court of Washington

[Title omitted]

Præcipe for Transcript on Appeal—Filed Sept. 25, 1935

To the Clerk of the Above Entitled Court:

Please prepare a transcript of record on appeal of the above entitled cause to the Supreme Court of the United

States, including therein the following papers and documents:

1. Amended Complaint.
2. Answer.
3. Temporary Injunction.
4. Decree.
5. Trial Court's Memorandum, showing Notice of Appeal in open court by the Tax Commission.
6. Statement of Facts and all Exhibits.
7. Opinion of Supreme Court of Washington and dissenting opinions.
8. Opinion of Supreme Court of Washington and dissenting opinions in companion case of State v. Northern Pacific R. Co., No. 25684.
9. Memorandum Opinion dismissing suit.
10. Judgment and Decree of Supreme Court of Washington.
11. Petition for Appeal.
12. Assignments of Error and Prayer for Reversal.
13. Statement as to Jurisdiction of Supreme Court of the United States.
14. Order Allowing Appeal and fixing Supersedeas.

[fol. 294] 15. Cost and Supersedeas Bond.

16. Citation.
17. Acknowledgment of Service of Papers and Notice as provided by Rule 12 of United States Supreme Court.
18. Præcipe for Transcript on Appeal.
19. Clerk's Certificate.

Maurice McMicken, A. J. Schweppe, Otto B. Rupp, H. J. Ramsey, Attorneys for Respondent.

Service of the foregoing Præcipe, by receipt of a copy thereof, is acknowledged this 25th day of September, 1935.

G. W. Hamilton, Attorney General of the State of Washington; R. G. Sharpe, Assistant Attorney General of the State of Washington, Attorneys for Appellants.

[File endorsement omitted.]

[fol. 295] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 296] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED (Pursuant to Rule 13 (9)—Filed Oct. 25, 1935

Comes now the above named appellant and adopts its assignments of error as its statement of the points to be relied upon.

Appellant further states that only the following parts of the record as filed in this court are deemed necessary to be printed for the consideration of the points set forth above, viz.:

1. Amended Complaint.
2. Answer.
3. Temporary Injunction.
4. Decree.
5. Trial Court's Memorandum, showing Notice of Appeal in open court by the Tax Commission.
6. Opinion of Supreme Court of Washington and dissenting opinions.

[fol. 297] 7. Opinion of Supreme Court of Washington and dissenting opinions in companion case of State v. Northern Pacific R. Co., No. 25684.

8. Memorandum Opinion dismissing suit.
9. Judgment and Decree of Supreme Court of Washington.
10. Petition for Appeal.
11. Assignments of Error and Prayer for Reversal.
12. Statement as to Jurisdiction of Supreme Court of the United States.
13. Order Allowing Appeal and fixing Supersedeas.
14. Cost and Supersedeas Bond.
15. Citation.
16. Acknowledgment of Service of Papers and Notice as Provided by Rule 12 of United States Supreme Court.
17. Præcipe for Transcript on Appeal.
18. Clerk's Certificate.
19. The following portions of the Statement of Facts:

Line 1 on page 3 to line 24 on page 6;
Line 29 on page 6 to end of page 7;
Line 25 on page 20 to end of page 20;
Line 15 on page 21 to line 5 on page 22;
Line 9 on page 23 to line 14 on page 23;
Line 12 on page 26 to line 26 on page 26;

Line 1 on page 38 to line 14 on page 38;
Line 1 on page 40 to line 5 on page 47;
Line 29 on page 48 to line 16 on page 49;
Line 10 on page 51 to line 25 on page 53;
Line 19 on page 54 to line 8 on page 80;
Line 13 on page 81 to line 20 on page 83;
Line 23 on page 89 to line 4 on page 90;
Line 8 on page 90 to line 27 on page 95;
Line 30 on page 96 to line 4 on page 99;
[fol. 298] Line 15 on page 102 to line 7 on page 131;
Second word line 3 on page 132 to line 2 on page 158;
Line 14 on page 159 to end of Statement of Facts.

And the following Exhibits attached to said statement of Facts:

Plaintiff's Exhibit No. 1;
Plaintiff's Exhibit No. 5;
Plaintiff's Exhibit No. 6;
Plaintiff's Exhibit No. 11;
Plaintiff's Exhibit No. 12;
Plaintiff's Exhibit No. 15;
Plaintiff's Exhibit No. 16;
Plaintiff's Exhibit No. 17;
Plaintiff's Exhibit No. 22;
Defendants' Exhibit No. 19;
Defendants' Exhibit No. 20;
Defendants' Exhibit No. 21.

Dated September 25th, 1935.

Maurice McMicken, H. J. Ramsey, Otto B. Rupp, Alfred J. Schweppe, Counsel for Appellant.

Service of the foregoing Statement of Points and designation of parts of record to be printed, by receipt of a copy thereof, is acknowledged this 25th day of September, 1935.

G. W. Hamilton, Attorney General of the State of Washington, and R. G. Sharpe, Assistant Attorney General of the State of Washington, Counsel for Appellees.

[fol. 299] [File endorsement omitted.]

Endorsed on cover: File No. 40,098. Washington Supreme Court. Term No. 544. The Pacific Telephone and Telegraph Company, appellant, vs. The Tax Commission of the State of Washington et al. Filed October 25, 1935. Term No. 544, O. T., 1935.